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THE

CABINET LAWYER.

3

THE

CABINET LAWYER:

A POPULAR DIGEST OF

THE LAWS OF ENGLAND,

CIVIL, CRIMINAL, AND CONSTITUTIONAL;

INTENDED FOR PRACTICAL USE AND GENERAL INFORMATION.

BIBLIOTHECA · BODLEIANA

TWENTY-FOURTH EDITION.

"I wish every man knew as much law as would enable him to keep out of it."—Lord Bacon.

LONDON:
LONGMANS, GREEN, READER, AND DYER.
1874.

LONDON:
PRINTED BY WOODFALL AND KINDER,
MILFORD LANE, STRAND, W.C.

PREFACE TO THE TWENTY-FOURTH EDITION.

In preparing the present edition, the changes which have taken place of late years in the law have been carefully noticed; Acts of Parliament no longer in force have been expunged from the text, and recent acts incorporated. This has been done with a completeness and accuracy which the Editor could not have attained without the assistance of the "Chronological Table and Index of the Statutes," recently published by authority.

The comprehensive articles on the law of Bankruptcy and Stamps will, it is believed, be found especially useful.

The chapters on "The House of Commons" and "Procedure in the Courts of Law and Equity," have, in a great measure, been re-written, and analyses of the "Ballot Act, 1872," and the "Supreme Court of Judicature Act, 1873," inserted.

The reader's attention is directed to the chapters on "Licensed Victuallers" and "Pawnbrokers," in which the provisions of the important consolidating and amending acts passed on these subjects in 1872 are given at considerable length.

The Editor trusts that the mistakes and omissions inseparable from a work like the present are not numerous or important enough to impair its efficiency. Its popularity is proved by the demand for twenty-four editions.

LINCOLN'S INN, *January*, 1874.

PREFACE TO THE FIRST EDITION.

Those who have attended to the details of administrative justice cannot fail to have remarked that the great mass of litigation results not more from the uncertainty of the law than the absence of the legal information which ought to be within the reach and comprehension of every member of the community. Of the questions brought forward for the adjudication of a public tribunal, a large proportion are referable to clear and settled determinations of law, with which the parties themselves ought to have been apprized, without the delay, expense, and anxiety inseparable from judicial proceedings.

A principal object of the present undertaking has been to lessen the occasions for an appeal to the Courts of Law; and, secondly, to render accessible to unprofessional readers a knowledge of the institutions by which individual rights, persons, and properties are secured.

As the primary design was a Popular Digest of the Laws of England, my first object has been compression and simplicity; the former I endeavoured to attain by strictly avoiding everything extraneous to a distinct elucidation of the immediate question: the latter, by divesting the subject of technical obscurity, combined with an arrangement which I think will be found as natural and convenient as the English laws will admit.

The work is divided into Six Parts, and each part is subdivided into chapters and sections. The *First* Part comprises the chief points in the origin and jurisdiction of the laws of England, and

in the institutions and government from which they have emanated. *Next* follows the Administration of Justice, including a brief account of the courts of law, the mode of civil and criminal procedure, the constitution of juries, and the nature of evidence. The *Third* Part embraces the laws affecting Classes, comprising the laws and regulations principally bearing on the social and domestic relations of life, and exclusively referring to particular descriptions of individuals; as the Clergy, Justices, Sheriffs, Parish Officers, Innkeepers, Travellers, Postmasters, Carriers, Pawnbrokers, Dissenters and Roman Catholics, Executors, Working Classes, Trustees, Author and Publisher, Partners, Banking and Joint-Stock Companies, Master and Servant, Landlord and Tenant, Principal and Agent.

Having stated the laws which affect persons in public and parochial offices, in their professions, trades, and occupations, and in their civil and social relations, we come next to those that affect their possessions; this forms the *Fourth* Part, embracing the incidents connected with the inheritance, possession, and conveyance of property under the heads of Wills and Codicils, Tithes, Contracts, Bills of Exchange, Bankruptcy, Assignment, Mortgage, Liens, Insurance, Insolvency, Game Laws, &c.

Next follows the consideration of Civil Injuries, or those minor offences, as Libel, Seduction, Trespass, and Slander, which affect the character or infringe the rights of individuals, but do not directly endanger the peace and security of the community.

The *Sixth* and concluding Part refers to Crimes and Punishments, being a digest of the criminal laws of England, and of the consequences and penalties of public offences. Great and salutary changes have been recently introduced into this department of the judicial system; among others, the speedier trial of misdemeanours has been facilitated, and the severity of their punishment augmented; the number of capital offences has been diminished, and milder and more reformatory modes of punishment substituted; punishments unsuited to the feelings of the age, as that of the pillory, and the burning or whipping of females, have been abolished,

and parts of others, as the disembowelling of traitors, and the ignominious burial of suicides on the highway, rescinded; corruption of blood has been limited to treason and murder; the barbarous exhibition of appeals in treason, murder, and felony, has been suppressed, and the trial by battle in civil suits; lastly, provision has been made for defraying the expenses of prosecution, both in cases of misdemeanour and felony; and the peremptory estreating of recognizances, which often occasioned hardship to individuals, has been placed under suitable restraint.

To the conclusion is added a Dictionary of Law Terms, Maxims, Acts of Parliament, and Judicial Antiquities, which could not be properly incorporated into the body of the work, yet it was necessary to include them, to comprise an entire and intelligible Digest of the Laws of England.

The public is so accustomed to bulky works on law, that a doubt may naturally arise of my ability adequately to treat the various subjects of the present volume in so small a compass. On this point I will endeavour to satisfy the reader. Of the mechanical art employed, a glance at the smallness of the type and the closeness of the pages will suffice; of the intellectual craft, a little more explanation may be requisite.

It has often been remarked into how small a compass human knowledge might be compressed, by confining it to a simple enunciation of facts and principles. It occurred to me that this mode of procedure might be applied, with peculiar advantage, to a Digest of the English Laws, and it is by rigorously adhering to it I have been enabled to accomplish the present undertaking. My aim, throughout, has been to concentrate, almost in an aphoristic form, *facts* and *legal points* only, exhibit them in popular language, under such arrangement and classification as would afford the readiest facility for turning to and obtaining the information necessary to the immediate object of research.

I will not conceal the design occurred to me from remarking the defects of the popular treatises on law already extant, and a con-

viction (perhaps a vain one) that I could produce something better. The publications bearing any analogy to the present are chiefly abridgments of Sir William Blackstone, which, from alterations in the Statute Book and the accumulating decisions of the Courts, have been rendered comparatively useless. It is true, attempts have been made to supply their defects, by publishing new editions, consisting, for the most part, of one or two additional sheets or notes, so that a great portion of the text retains laws and determinations that have long ceased to be English law.

Of the omissions in works of this description one instance may suffice. The law of copyright, not only from the pecuniary value of literary productions, but the number of persons interested therein, has become of the utmost importance; yet, in two publications of the nature alluded to, there is not the slightest notice of the existence of this species of property, or of the laws by which it is protected.

Since the Peace, the Legislature has been sedulously occupied in revising the Statute Law; much remains to be done, but a great deal has been accomplished. The late Parliament, previous to its dissolution, had repealed, modified, or consolidated upwards of 1,000 statutes. The 3 G. 4, c. 41, repeals upwards of 200 statutes, or parts of statutes, relative to the export and import of merchandise, the commerce of aliens and denizens, the gauging of wine, and other mercantile regulations. The Customs Law consolidates 450 Acts of Parliament into one; the Jury Act, 30; the Bankrupt Act, 20; and the Law for Improving the Administration of Criminal Justice, some 60 or 70. These changes have been carefully attended to; the old laws repealed have been remarked; and when an act referred only to a particular class, and consequently did not fall within the general nature of the publication, I have indicated the most recent law on the subject, for the convenience of those more especially interested therein.

In analyzing a statute, I have not invariably followed the order

of the statute itself; and framers of acts of parliament do not always adopt the most lucid arrangement, and, consequently, instead of following them from section to section, I have fairly dissected the subject-matter, embodying the scattered clauses in separate and distinct sections:—this appeared to me the best method for the general reader, and its utility will be more particularly observable in the digest of the Bankruptcy and Insolvent Laws.

Having thus endeavoured to give the reader an idea of the plan and mode of execution of the work, I have only to solicit indulgence for errors, perhaps inseparable from undertakings of this nature. To those acquainted with the complex and confused state of the English laws, no apology will be requisite, either for sins of omission or commission. And, generally, when defects are discovered, it will be fair to bear in mind the novel plan of the publication, and the many points of superiority it possesses over others of similar character.

J. W.

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THE

CABINET LAWYER.

PART I.

GOVERNMENT AND LAWS OF ENGLAND.

Law is a rule of conduct, sanctioned by authority, by which certain acts are either enjoined or prohibited.

The primary objects of law are the protection of persons, of property, and of society.

The origin of laws, the nature of the institutions from which they have emanated, and the relations subsisting between the Government and the People, naturally form the first objects of inquiry. These subjects will occupy the first division of this work, and be classed under the following heads :—

I. *Origin and Jurisdiction of the Laws of England.*
II. *Constitution and Government of England, and the Rights of the People.*

CHAPTER I.

Origin and Jurisdiction of the Laws of England.

The laws of England, like those of most countries, established in an early period of society, consist of a series of customs and obligations resulting from experience, and confirmed by judicial decisions, or framed and corrected by the *legislature*. The three

principal divisions of the laws, which are dispensed by the judges and magistrates, are the Common, Statute, and Equity Law.

THE COMMON OR UNWRITTEN LAW comprises those maxims, customs, and observances which, as they are of a higher antiquity than memory or history can reach have not been formally created and recorded by the legislature, but have acquired a binding force by immemorial usage, and the strength of general accordance and reception. General custom, or common law, settles the course in which lands descend by inheritance, the manner of acquiring and transferring property; that there shall be four courts of record; that a deed is void, if not sealed and delivered; that money lent upon bond is recoverable by action of debt; and that breaches of the peace are punishable by fine and imprisonment.

By immemorial usage is not meant a period so remote as to be beyond historical record; the bounds of legal memory are limited by the 3 Edward I, to the commencement of the reign of Richard I., from which time an uninterrupted custom acquires legal validity. But, as this rule has been often productive of injustice, it is provided by 2 & 3 W. 4, c. 71, that no right of common shall be defeated after thirty years' enjoyment, and after sixty years the right is deemed absolute and indefeasible, unless had by consent or agreement. In claims of right of way or other easements, the periods are twenty and forty years. Claims to the use of light to any dwelling-house or building enjoyed for twenty years, are indefeasible, unless shown to have been by consent.

Besides general customs, there are particular *local* customs, or laws, which affect only the inhabitants of particular districts; such as the customs of the City of London, also confirmed by Act of Parliament, of copyhold manors, of gavelkind in Kent, and some other parts of the kingdom, and of borough-English at Stafford and other places.

The Civil and Canon Laws form branches of the Unwritten or Common Law, which have not been enacted by parliament, and have been by custom adopted and used only in certain courts, under different restrictions; namely, in the Ecclesiastical courts, the courts of Admiralty, and the Chancellor's court of the University of Cambridge.

The decisions of the courts, being the best evidence of what the common law is, are held in high regard; and are preserved as authentic records in the several courts. They are also to be seen in the volumes of the different reports.

The Written or Statute Law consists of statutes, acts, or edicts, made by the sovereign, by and with the advice and consent of the two houses of parliament.

Acts of Parliament or Statutes are of two kinds, *public* and *private*. Acts are deemed *public* and *general*, of which the judges take notice without pleading; such are those concerning the queen and royal family, prelates, nobles, great officers, sheriffs, &c. Also,

acts concerning taxes, commerce and trade in general, or concerning all persons in general, though it be a special or particular thing, as those relating to assizes, forests, chases, &c. The oldest written law now extant, and printed in the statute book, is Magna Charta; though, doubtless, there were many acts before that time, the records of which have been lost, and the maxims incorporated into the common law. *Private* acts are those which concern only a particular species, thing, or person, of which the judges will not take notice without pleading; such as those relating to corporate bodies; to dissenters; to colleges in universities; to particular parishes, inclosures, &c. *Public* and *private* acts are also distinguished as to fees. All bills whatever, from which private persons and corporations derive exclusive benefit, are subject to the payment of fees, and such bills are in this respect denominated *private bills*. In parliamentary language another distinction is used, and some acts are called *public general acts*, others *public local acts*, namely, church acts, canal and railway acts. It was not till the year 1796 that acts of parliament were made generally accessible to the public: prior to that time, only about 1,100 copies were printed, which were confined to the members of both houses, the privy council, and certain great officers of state; but, in consequence of representations to parliament, 5,500 copies of every public general statute, and 300 of every public local and personal statute, are now distributed through the United Kingdom, to the houses of parliament, public offices, public libraries, courts of justice, magistrates, and clerks of the peace. They are also sold to the public separately by the queen's printer at the rate of three-halfpence a sheet for public acts, and threepence for private acts. Except in cases where the territorial limits of acts of parliament are expressly named, their jurisdiction is not always easily ascertainable. The general principle of the local operation of the statutes seems as follows:—From *Magna Charta*, 9 H. 3 (A. D. 1224), to 10 H. 7 (1494), they extend to England and Ireland. From 10 H. 7 (1494), to 6 Anne (May 1st, 1707), they were limited to England. From 6 Anne to 41 G. 3 (Jan. 1st, 1801), they extend to England and Scotland. From Jan. 1st, 1801, they extend to the United Kingdom of England, Scotland, and Ireland; Wales and Berwick are included in *England*; and Guernsey, Jersey, Alderney, Sark, and Man, when specifically mentioned. A statute begins to operate from the time when it receives the royal assent, unless otherwise provided for. But when an act continuing it has received the royal assent, expires before a bill from the expiration of the former, unless the latter act takes effect except as to penalties. Acts are to be construed according to their letter, but the intent otherwise provided for, not equitably, not according to their letter, but the intent they were made; especially that these and object with which they were made; especially that these statutes may be considered, namely, the old law, the mischief, and the remedy.

By 10 & 11 V. c. 69, more effectual provision is made for ta: the costs and expenses charged on *private* bills by parliamen agents, attorneys, solicitors, and others. No action is to be bro for costs till one month after the delivery of the bill for the sa unless the party to be charged is likely to quit the kingdom. Ta officer to be appointed by the speaker of the House of Comm and to execute his official duties conformably to the speal directions. Speaker to prepare list of charges; and for mat not included in the list, the taxing officer may allow reason costs. Taxing officer may examine parties on oath, and cal books and papers relative to charges and expenses: but no pc is given him over the amount of fees on private bills payabl the House of Commons. Costs to be taxed on application of party chargeable, or on application of parliamentary agent, torney, or solicitor. Regulations of like import have been n by 12 & 13 V. c. 78, for the more effectual taxation of cost private bills in the House of Lords, and which is amended b act of 1865, the 28 V. c. 27.

In 1850 the 13 V. c. 21 was passed for curtailing repetit and redundancies in statutes, and which provides that any passed may be altered, amended, or repealed, in the same sess Acts are to be divided into sections without the usual introduc words, as, "be it enacted." Where any act is referred to i to 4 Hen. 7, it is made sufficient to cite the year of the ki reign, or if more statutes than one in the same year, the stat and if more than one chapter, the chapter.

The interpretation of the statutes and maxims of the com law rests with the judges, whose knowledge therein arises f study and experience, from the perusal of the statutes, recor pleas, books of reports, and the tractates of learned men. W the common law and the statute differ, the common law gives p to the statute; and an old statute gives place to a new one, s as it is contrary thereto (but only when the matter of the statute is clearly repugnant to that of the new one), upon general principle that, when contradictory, posterior abro prior laws. When a decision has once been made on any p it is an invariable rule to determine it in the same way ag unless the precedent can be clearly proved erroneous; ju being sworn to decide not according to their private opinions, according to the known laws and customs of the realm.

Supplemental to the common and statute law, is EQUITY, w is a species of unwritten law, whose office is to detect latent fr and concealments which the process of the ordinary courts ca reach; to enforce such matters of trust and confidence as are b ing in conscience, though not cognizable in a court of com jurisdiction; and to give a specific relief, more adapted to the cumstances of the case, than can always be obtained by the and provisions of the positive law. The subject of partner

also falls almost exclusively under the management of the Courts of Equity; and, until a recent period, they were the only tribunals to which recourse could be had to compel a man to abstain from the commission of an injury, or to perform his contract. But now every one who brings an action in one of the Common Law Courts for breach of contract or other injury, is entitled, by 17 & 18 V. c. 125, to claim also in such action a *writ of injunction* against the continuance or repetition of such breach of contract or other injury.

These functions of courts of equity are limited to cases of *property;* for the nature of our institutions will not permit that, in criminal matters, which involve the personal security of individuals, a power should be lodged in any judge to construe the law otherwise than according to the letter and established authority. And it may be further observed, that the jurisdiction of equity has lost much of its original character of arbitrary influence where the law was harsh or silent. From the effects of time and precedent, its rules and decisions have become *fixed laws* themselves; sometimes supplying, sometimes controlling, as accident or occasion may have directed, the institutes of common and statute law.

CHAPTER II.

Of the Countries subject to the Laws of England.

THE *jurisdiction* of the common law, except as provided by statute, is limited to the territory of England, and does not include either Wales, Scotland, Ireland, or any other part of the empire.

It will be proper to take a review of each of these countries before we consider the kingdom of England.

The territory of Wales was annexed to the dominion of the Crown of England in the reign of Edward the 1st, and the title of "Prince of Wales" has since been always conferred on the eldest son of the sovereign of England. By 12 Edw. 1, commonly called the Statute of Wales, material alterations were made in the Welch laws, especially in the forms of judicial procedure; and gradually by different statutes, passed at various times, and more especially by 27 Hen. 8, c. 26, and 34 & 35 Hen. 8, c. 26, the independence of Wales was entirely done away with, and its people were admitted to a thorough communication of laws with the subjects of England.

The civil condition of the Principality has since differed but slightly from that of the kingdom at large, and by 20 Geo. 2, c. 42, it is enacted that an act of Parliament, in which England only is mentioned, should henceforth include Wales and the town of

Berwick-upon-Tweed. Until lately, Wales possessed superior courts, called Courts of Great Session, independent of the process of Westminster Hall, and was not visited by the English judges of assize. One member only was allowed to each of the Welch counties and towns represented in parliament. But, in the reign of William the Fourth, the jurisdiction of the Courts of Great Session was abolished by act of parliament, and it was enacted that assizes should be held in like manner as had been usual for the English counties. It was also, by 2 Will. 2, c. 45, called the Act to amend the Representation of the People, arranged that 2 members should be allowed to each of 3 Welch counties, and 1 member to each remaining county.

The kingdom of Scotland, notwithstanding the union of the crowns, on the accession of James VI. to that of England, continued a separate and distinct kingdom for above a century after, though a union had long been projected, which was judged more feasible, as both nations were anciently under the same government, and still retained a great resemblance in their laws and institutions. Sir E. Coke supposes the common law of each to have been *originally* the same, especially as the most ancient and authentic law book of the Scotch, *Regiam Majestatem*, containing the rules of their ancient common law, is extremely similar to that of Glanvil, which contains the principles of the English common law as it stood in the reign of Henry II. The diversities subsisting between the two laws at present may be readily accounted for, from the diversity of practice in two large and uncommunicating jurisdictions, and from the acts of two distinct and independent parliaments, which have, in many respects, altered and abrogated the common law of both kingdoms. The great work of the Union between the two kingdoms was effected in 1707, by 6 Anne, c. 8, when twenty-five articles of union were agreed to by the parliaments of both nations, the substance of the most considerable being as follows:—1. That on the 1st of May, 1707, and for ever after, the kingdoms of England and Scotland shall be united into one kingdom, by the name of Great Britain. 2. The succession to the monarchy of Great Britain shall be the same as was before settled with regard to that of England. 3. The United Kingdom shall be represented by one parliament. 4. There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed. 9. When England raises £2,000,000 by a land tax, Scotland shall raise £48,000. 16 & 17. The standards of the coin, of weights, and of measures, shall be reduced to those of England throughout the United Kingdom. 18. The laws relating to trade, customs, and the excise shall be the same in Scotland as in England; but all the other laws of Scotland shall remain in force, though alterable by the parliament of Great Britain; yet with this proviso, that laws relating to public policy are alterable at the discretion of the parliament;

laws relating to *private* rights are not to be altered but for the evident utility of the people of Scotland. 22. Sixteen peers are to be chosen to represent the peerage of Scotland in parliament, and forty-five members to sit in the House of Commons. 23. The sixteen peers of Scotland shall have all privileges of parliament, and all peers of Scotland shall be peers of Great Britain, and rank next after those of the same degree at the time of the Union, and shall have all privilege of peers, except sitting in the House of Lords, and voting on the trial of a peer. Upon these articles of Union, and the act relating thereto, two observations may be made. *First*, the church of Scotland and the four universities of that kingdom are established for ever, and all succeeding sovereigns are to take an oath inviolably to maintain them. *Secondly*, the municipal laws of Scotland are still ordained to be observed in that part of the island, unless altered by parliament; so that the municipal, or common law of England, is, for the most part, of no validity in Scotland. But acts of parliament, since the Union, in general extend to Scotland, unless the act itself provides expressly to the contrary. The eldest son of a Scotch peer cannot be elected one of the forty-five representatives, for he was incapable of sitting in the Scotch parliament before the Union, and the law in this respect has not been since changed. But the eldest son of a Scotch peer may represent any place in England. The landed qualifications of £600 and £300, which were the requisite qualifications for a seat in the commons of England till abolished in 1858, did not extend to Scotland, a candidate for Scotch representation being only required to have the same qualification as the electors.—*Mercantile Law Amendment.* In matters of *trade and commerce* inconvenience having been felt from the laws of Scotland being in some respects different from those of England and Ireland, the law of Scotland was amended in 1856 by 19 & 20 V. c. 60. By s. 1, where goods have been so'd, but not delivered to the purchaser, it is no longer competent for the creditor of the seller to attach the goods. Seller not entitled to a right of retention generally against a *second* purchaser, who buys them before delivery of the first purchaser; s. 2, seller not held to warrant goods unless there be an express warranty in the contract. Guarantees to be in writing, the guarantees to a firm not to be binding after any change of the firm; ss. 6, 7, no acceptance of a bill of exchange to bind the acceptor, unless it be in writing. All bills drawn within the United Kingdom of Great Britain and Ireland, and the islands adjacent, or any ports within the same, to be held to be inland bills. Notice of the dishonour of inland bills to be given as in the case of foreign bills, by the law of Scotland. In relation to liens, and claims for repairs or supplies to ships, every port within the United Kingdom is to be deemed a home port, s. 18. The laws of England and Ireland, where different, are assimilated to these amendments in the law of Scotland, by 19 & 20 V. c. 97.

The *bankruptcy act* of Scotland, 1856, is amended by
c. 33, so that if, in any case where sequestration is o
awarded, it appears to the court of session or to the lor
upon a summary petition by the accountant in bankrup
creditor or other person having interest, presented to
sion of the said court or to the lord ordinary at any t
three months after date of the sequestration, that a
the creditors in number and value reside in England or
and that from the situation of the property of the b
other cause his estate and effects ought to be distribu
the creditors under the bankrupt or insolvent laws of
Ireland, the court in either division, or the lord ord
recall the sequestration. By s. 2, discharge of bankru
certain cases of fraudulent concealment be refused, thou
sition be made by creditors.—*Universities of Scotland.*
1858, the 21 & 22 V. c. 83, provides for the better
and discipline of the universities of Scotland and imp
course of study, and for the union of King's College an
College, Aberdeen, under the title of the "Universit
deen," taking rank among Scotch universities from the
erection of King's College, A.D. 1494. By s. 1, future ch
St. Andrews, Glasgow, Aberdeen, and Edinburgh, to be
members of the general council, and principals, as such,
deemed professors of divinity, nor a layman be ineligil
principal, and the office not to be included in the term
theology," used in the 16 & 17 V. c. 89. University c
instituted, of which the director is president, with a
and casting vote. The *Senatus Academicus* to cons
principal and professors, with power to alter and supe
teaching and discipline of the university, subject to the
the university court. General councils of each univer
sist of the chancellor, members of the university cou
fessors, masters of art, doctors of medicine, who, as n
students, have given regular attendance on classes in
during four complete sessions, s. 6. Right of nominat
fessorships vested in the university court. Section
appoint the commissioners and define their powers in th
the university, and the revision of their foundations, ha
regard to the reports made by former commissions appoin
the universities. Doubts having arisen as to the admi
office of principal in the universities of Scotland, they a
by 22 & 23 V. c. 24. Under this act any person elected,
or provided for the office of principal in any of the uni
colleges in Scotland, except the college of St. Mary's in
sity of St. Andrews, shall not be required to subscribe th
of faith, but shall subscribe as provided by 16 & 17
Tramways. The 24 & 25 V. c. 69, provides for the
of tramways on turnpike roads, and tolls for the use,

n of trustees. But tramways not to be laid down in burghs t leave of magistrates and council. The 20 & 21 V. c. 73, sed to abate the nuisance from the smoke of furnaces, and is amended by 24 & 25 V. c. 17, under which complaints made and penalties recovered without the aid of the Lord te. Parliamentary boroughs to include the whole parlia- y boundary within the provision of 21 V. c. 73. The 25 . c. 35 amends the acts on the sale of *excisable liquors*. s not to be granted without a certificate of character to report persons licensed from whose premises persons ted have frequently issued, or other cause of complaint. hawking excisable liquors may be apprehended, and on ion fined or imprisoned. Persons found in a shebeen drunk king may be taken into custody. The 26 & 27 V. c. 108, , and in certain cases makes compulsory, the practice of tion. Names of vaccinators to be published; medical nt not to be considered parochial relief. Persons attempt- inoculate, or by any other means produce the disease of ox, subject to a penalty of £5. To amend the Scotch law e liability of *owners of dogs* for injuries done to sheep or the 26 & 27 V. c. 100, enacts that, in an action for damages, not be necessary for the pursuer to prove a previous pro- in a dog to injure sheep or cattle. Occupier of any house s in which a dog has been usually kept to be deemed the if with knowledge thereof.

town of Berwick-upon-Tweed was originally part of the m of Scotland, and was subdued by Edward I., and finally y Edward Baliol. It received from King Edward a charter, was afterwards confirmed with some additions, reserving to ght to be governed by its former laws and usages. But, there are some local peculiarities derived from the old law. Berwick-upon-Tweed now forms part of the realm of d, and is duly represented in the House of Commons.

nd is to a great extent inhabited by people partly descended e English, who planted it as a colony after the conquest of ary II., and the laws of England were then received and d by the Irish nation, assembled at the council of Lismore. , however, until the Union, was a distinct state; and up 22 & 23 G. 3, a subordinate kingdom, dependent on the Great Britain. Since these acts, the important measure n between Britain and Ireland has taken place, by which ional rights and interests of the two countries have been timately united and consolidated. By the articles of the which were ratified by act of parliament, July 2, 1800, it ed that the kingdom of Great Britain and Ireland shall, 1st of January, 1801, and for ever after, be united into one n, by the name of the United Kingdom of Great Britain land; that there shall be one parliament, styled the parlia-

ment of the United Kingdom of Great Britain and Ireland; that four lords spiritual of Ireland, by rotation of sessions, and twenty-eight lords temporal, elected for life by the peers of Ireland, shall sit in the House of Lords; and one hundred commoners, representing the commons of Ireland, shall sit in the House of Commons; that the churches of England and Ireland shall be united into one protestant episcopal church, to be called the United Church of England and Ireland; that the subjects of both nations shall be entitled to the same privileges with regard to trade and navigation, and also in respect of all treaties with foreign powers; that all bounties and prohibitions upon the importation of merchandise from one country to the other shall cease; but the importation of certain articles specified in the act shall be subject to countervailing duties; that the sinking funds and the interest of the public debts of each country shall be defrayed by each separately; that for the space of twenty years after the Union, the contributions of Britain and Ireland towards the public expenditure, in each year shall be in the proportion of fifteen to two; lastly, that the law and courts of each kingdom shall remain the same as they are now established, subject to such alteration by the united parliament as circumstances may require. It may here be observed that since the Union, all acts of parliament extend to Ireland, unless it is expressly excepted, or the provisions of the act are such as clearly do not apply to Ireland. Since this legislative incorporation, other measures have been adopted for cementing more closely the interest of the two countries. In 1819, an act passed for consolidating the exchequers of England and Ireland; and, in the session of 1823, various alterations were sanctioned by parliament for facilitating the abolition of the countervailing duties, and placing the mercantile intercourse of the two nations on the footing of the coasting trade. By 6 G. 4, c. 79, the currency of Ireland is assimilated to that of Britain, and all mercantile and pecuniary transactions are declared to be held and understood to be made in the currency of the United Kingdom. By the important measure of the Catholic Relief Act, 10 G. 4, c. 7, the disabilities to which a vast majority of the Irish population had been subjected were removed, and a community of interest and privilege extended to every individual of the empire. Under William IV. and Queen Victoria various other laws have been passed for improving the police and constabulary, for the abolition of vestry cess, the reform of juries, the tithe and church establishment, the construction of railroads, amendment of internal navigation, the relief of encumbered estates; and the general spirit of the internal government has been especially directed to discountenance those social divisions originating in the conflicting jealousies of a catholic and a protestant hierarchy. The acts for facilitating the sale of encumbered estates having proved beneficial, their provisions were amended in 1858 by 21 & 22 V. c. 92, and a permanent court, with three

judges and registrar, created for the sale and transfer of land, whether encumbered or unencumbered. In 1863 vaccination was made by a statute compulsory, and parents required within six months after birth to carry their children to the medical officer of the district. The 26 V. c. 11, introduced a complete system of registration of births and deaths, and in the same year the marriage laws were amended, and the board of guardians better enabled to recover the cost of the maintenance of illegitimate children. In the year following, Ireland was made a special subject of legislation, and salutary acts passed in relation to county voters, conveyancing and law procedure, the sale of beer, and the game laws. By 36 & 37 V. c. 21, tests are abolished in Trinity College and the University of Dublin, and no person elected to a fellowship or other office is in future to be deprived of it by reason of not being in holy orders. By 32 & 33 V. c. 42, s. 2, from January 1, 1870, the union created by parliament between the two Churches of England and Ireland is dissolved, provision being made in respect of the temporalities of the Irish Church and the royal college of Maynooth. Salaried commissioners to be appointed, with full power to decide questions pertaining to the act, to enforce the attendance of witnesses, and, after tender of their expenses, punish such as refuse to give evidence, or to produce deeds, papers, or documents. S. 13 dissolves ecclesiastical corporations, and abolishes the right of the bishops to sit in the House of Lords. By s. 14, compensation granted to deprived ecclesiastical persons other than curates, with the exception of permanent curates, or others in specified cases of infirmities or prolonged services, s. 15. Subsequent sections refer to power of the church after the passing of the act, the abolition of ecclesiastical courts, the redemption of the annuities and life interests, &c.; payments with respect to burial grounds, church residences, and to chattels belonging to see or church, compensation to non-conforming ministers, and with saving clauses relative to proprietary chapels and chapels at ease.

There are other adjacent islands subject to the crown of Great Britain. Some of them, as the Isle of Wight, the Isle of Portland and the Isle of Thanet, are comprised within a neighbouring county; but others must be referred to more particularly.

The Isle of Man is a distinct territory from England, and is not governed by English laws; neither does any act of parliament extend to it, unless expressly named therein. It was formerly a subordinate feudatory kingdom, subject to the kings of Norway; then to King John and Henry III. of England; afterwards to the kings of Scotland, and then again to the crown of England; and at length, we find Henry IV. claiming it by right of conquest, and disposing of it to the Earl of Northumberland, upon whose attainder it was granted to Sir John de Stanley. After several other vicissitudes, on the death of James, Earl of Derby, in 1735, the Duke of

Atholl succeeded to the island, as heir general by a female branch. In the meantime, though the title of king had long been disused, the earls of Derby, as lords of Man, maintained a sort of legal authority there, by assenting or dissenting from laws; and no English writ or process was of any authority in Man. Such an independent jurisdiction being found inconvenient for the purposes of justice, by affording a ready asylum for debtors, outlaws, and smugglers, the interest of the then proprietor was purchased by government in 1765, and the island and its dependencies (except the landed property and some other rights of the Atholl family) became vested in the crown, and subject to the regulations of the British excise and customs. The Isle of Man, however, retains its peculiar laws, except as regards the revenue, so that it is still a convenient refuge for debtors and outlaws.

The Channel Islands, being the islands of Jersey, Guernsey, Alderney, Sark, and their appendages, were part of the duchy of Normandy, and were united to the crown of England by the first Norman princes. They are governed by their own laws, which are mostly the ducal customs of Normandy, being collected in an ancient book called "*Le Grand Coustumier.*" They are not bound by common acts of the English parliament, unless specially mentioned. All causes are originally determined by their own officers, but appeal lies from them to the sovereign in council in the last resort.

The more distant possessions of the British Crown in various quarters of the globe must next be considered. They are usually called colonies, and have been obtained by cession or conquest, or originally founded by the state, or individuals who voluntarily emigrate from, or have been compulsorily, in virtue of a judicial sentence, sent abroad by the mother country. England appears to have been the first and long the only European kingdom that established penal colonies for the reception of criminals. The colonies of the empire are 44 in number; but Tasmania, the Bermudas, and Western Australia were the last remaining convict settlements. The principal other colonies of the empire are the Canadas, Nova Scotia, and New Brunswick, in North America; in the West Indies, Jamaica, Barbadoes, Antigua, Grenada, St. Lucia, and Trinidad, exclusive of Demerara and Berbice in South America. Britain has also settlements elsewhere, as Victoria and New South Wales, Port Lewis, Columbo, Cape of Good Hope, Mauritius, New Zealand, and some others, exclusive of her extensive dependencies in the East Indies. The English law is not necessarily in force in the colonies. Where a country, which was previously under a settled government, accrues to the crown by cession or conquest, only such parts of the English law are in force there as have either been specifically introduced by statutes or can be shown by a course of decisions to have been acted on in such country, *Campbell* v. *Hale*, Cowp. 204. All persons charged in

any colony with offences committed on the sea may be dealt with in the same manner as if the offences had been committed on waters within the local jurisdiction of the courts of the colony; and shall receive the same punishment as on convictions for like offences in England. The 23 & 24 V. c. 122, empowers legislatures of possessions abroad to make ordinances, same as provisions in 9 G. 4, c. 31, s. 8, as regards persons feloniously struck, poisoned, or hurt and dying of the injury at sea or any place out of England or the colonies.

In 1865 a series of important acts was passed in relation to the boundaries, political and civil administration, of British foreign possessions and colonies.

By 28 V. c. 5, the territories of Kaffraria are incorporated with the Cape of Good Hope. Kaffraria to be divided into two electoral divisions, and return four members to the house of assembly of the Cape. For elections to the legislative council, Kaffraria to be comprised in and form part of the eastern districts. S. 15 provides for the transfer of the jurisdiction of the supreme court of the Cape in criminal and civil matters.

By 28 V. c. 14, better provision is made for the naval defence of the colonies. By s. 3, power is given to the proper legislative authority of any colony to provide vessels of war, raise men, and commission officers. Also to raise and maintain a body of volunteers bound to general service in the royal navy, in case of emergency, or in vessels of war. Volunteers to form part of the royal naval reserve. Colonial vessels and men may be placed at the service of the admiralty for general service, if offered by the colonial government. Not to impose any charge on the imperial treasury without the consent of parliament, nor to abridge colonial legislative powers.

The 28 & 29 V. c. 63, removes doubts as to the validity of colonial laws. The term "colony" defined to include all possessions abroad in which there is a legislature, except the Channel Islands and the Isle of Man. By s. 2, any colonial law is void, if repugnant to an act of the imperial parliament made to extend to the colony. But colonial law not void, if only inconsistent with instructions from the home government. S. 7 makes void certain acts of the legislature of South Australia.

By 28 & 29 V. c. 64, every law made by the legislature of any possession abroad, establishing the validity of marriages, to be binding from the date of contract within all parts of her Majesty's dominions. But the act does not give validity to any marriage unless at the time of such marriage both parties were, according to the law of England, competent to contract the same.

The 28 & 29 V. c. 113, authorizes the payment of retiring pensions to colonial governors. Scale proportioned to amount of salary, and years of service. The full rate for governors who have governed at least four years: if salary has not been less than

£5,000, £1,000 pension; if not less than £2,500 salary, £750; if less than £1,200, £500 The reduced rate of pension is two-thirds of the full rate. The full rate granted at the age of sixty and eighteen years' service. Deduction from pension on account of half-pay. Persons receiving pensions bound to accept employment till the age of sixty, and not to relinquish till sixty-five. Statement of pensions granted to be annually laid before parliament.

We may next consider at greater length the important British possessions in India.

In 1708 two rival associations existed in England for the purposes of East Indian traffic, but in that year they were consolidated into one by an act of parliament (6 Anne, c. 17). This joint body, which was known afterwards by the name of "The East India Company," crushed the power of the rival French settlers, and gradually acquired immense territorial dominions (always being subject to the British Crown). It received a charter from the crown, and its privileges were at different times limited and defined by the legislature.

At length, in consequence of the mutiny of the Sepoy (native) soldiery in India in the year 1857, an act of parliament (21 & 22 V. c. 106) was passed, by which the government of India was transferred to the crown, though the Company was allowed to retain its incorporated capacity to a certain extent.

In future, the directors elected by the general court of the Company are alone to be the directors; and to the intent that the number of directors may be reduced to six, the act says that two directors are only to be elected by the general court at each biennial election, to fill the vacancies occasioned by the expiration of the directorial term of office.

The qualification of a ten-years' residence in India by a director has ceased to be required, and it is no longer obligatory on the directors to summon four general quarterly courts every year. Except claims of mortgages on the Security Fund, the Company is relieved of all liability in respect of claims arising out of any treaty, grant, or engagement. In short, bodily and in spirit, both as to power and capital, the Company is extinct; and the chief if not only virtual function that remains to it is to receive, as provided by s. 72, from the secretary of state for India, the annual sum out of the Indian revenue requisite to pay the dividends due to the proprietors of the interest-bearing stock of the Company, and the expenses incident to the keeping the transfer books of such stock.

Since the commencement of the act, thirty days after being passed (August 2, 1858), all powers previously exercised by the Board of Control and the E. I. C. in respect of the territories and revenues of India have been and now are exercised by the secretary of state and Council for India. By s. 7, the first council of India is to consist of fifteen members, of whom the court of directors of

the E. I. C. are to elect seven from their own body, the remaining eight to be appointed by H. M. In default of election by E. I. C., or refusal to serve, the queen to appoint. Any vacancy in the eight nominees to be supplied by the crown, or in the seven elected members by the council at a meeting held for the purpose. The whole part of the council elected or appointed must have served or resided in India for ten years at the least, and (excepting present directors and officers of the Company who have so served or resided) have not previously left India above ten years. But no unqualified person is to fill any vacancy, unless nine at least of the continuing members of council be qualified as to residence, service, and absence, s. 10. Tenure of office during good behaviour, or removal on address of both houses of parliament. Members of council not to sit in parliament. Salary of each, £1,200 per annum, with a pension of £500 on retiring from infirmity after ten years' service. Present secretaries and officers of the E. I. C. to be continued, but the secretary of state in council within six months to submit to the crown a scheme for the permanent establishment, the number and salaries of which, when fixed, to be submitted to parliament, s. 16. After first formation of establishment, power to remove officers, to make appointments and promotions, vested in the secretary in council; but the order of H. M. in council, May 21, 1855, or such other regulations as H. M. in council may frame for examination, probation, or tests of fitness in the junior situations in the civil service of the crown, to apply to appointments on the Indian establishment. Compensation to officers on home establishment of E. I. C., and of the Board of Control, not retained on the new establishment, to be settled by the crown. Superannuations to be allowed as settled before the act, s. 15–18.—*Duties and Procedure of Council:* By s. 19, under the direction of the secretary of state, the council to conduct the whole business of the government and correspondence of India. Every communication to India is to be signed by one of the principal secretaries of state; and, except as otherwise provided by the act, every order in rotation to be signed by such secretary of state; and all dispatches from India to be addressed to such secretary. Secretary to divide council into three committees, and regulate transaction of business; to be president of the council, with power to vote, and to appoint a member of the council to be vice-president. Secretary in council and five members of council to be a quorum for business; in absence of secretary, vice-president to preside; or in absence of both, a member of council to be chosen to preside. Meetings to be fixed by secretary, but one meeting at least to be held every week. Differences of opinion at meetings, except in certain cases, to be determined by secretary; if an equality of votes, secretary to have a casting vote; all acts done in absence of secretary to have his sanction or approval in writing; in case of difference of opinion on any question decided

at a meeting, the secretary may require that his opinion and reasons for it may be entered in the minutes of proceedings; and any member present at the meeting may require that his opinion and reasons for it may be in like manner entered, s. 23. All orders and communications proposed for India or home by secretary, unless previously submitted to a meeting of council, to be placed in the council room, for the perusal of members, during seven days, and any member, in a minute book kept for the purpose, may record his opinion of the same, and a copy be forthwith sent to the secretary. If majority of council record their opinions against proposed act of secretary, and he does not defer to the majority, his reasons must be recorded for acting in opposition thereto. In certain urgent cases an order or despatch may be issued by secretary without being submitted to council, but the reasons for so acting to be recorded, and notice given to members of council. But orders as previously sent through secret committee of E. I. C. may be sent by secretary without communication with council. Despatches from India marked "Secret," need not be communicated to council, unless secretary thinks fit, s. 28.—*Appointments and Patronage:* The appointments of governor-general of India, fourth ordinary member of council of governor-general, and governors of presidencies heretofore made by E. I. C. with crown approval, and that of the advocate-general of the presidencies by the Board of Control with like approval, to be now made by the crown. The appointment of the ordinary members of council of governor-general, except the fourth, and of the members of council of the several presidencies, to be made by secretary in council, with the concurrence of a majority of the members present at a meeting; the appointments of the lieutenant-governors of provinces or territories to be made by the governor-general with approval of the crown. All appointments as now made in India to continue to be so made; but secretary in council, with majority of members present, may make regulations for the division and distribution of nominations and patronage among the Indian authorities, ss. 29–31. By s. 32, secretary in council to make regulations in concert with H. M.'s commissioners acting under orders of May 21, 1855, regulating admissions into civil services of H. M. for admitting all persons being natural-born subjects as candidates for examination for the junior civil service of India, and only such as have certificate of fitness to be qualified for appointment by secretary in council. Such regulations by secretary to be laid before parliament. All other appointments to cadetships, naval and military, not otherwise provided for, vested in the crown. Regulations to be made prescribing the examinations open as in civil service to all persons for cadetships in the engineers and artillery, s. 34. By s. 35, not less than one-tenth of persons recommended for military cadetships to be selected from the sons of persons who have served in

India, or served the E. I. C. Except as mentioned, nomination for military cadetships to be made by secretary and council, so that out of seventeen nominations the secretary shall have two, and each member of council one; but all nominations must be approved by secretary in council. Except as provided, all regulations as to appointments to have approval of secretary in council. *Revenues and Accounts:* By s. 39, all the real and personal property of E. I. C. to be vested in the crown for the government of India. The expenditure of revenues in India and elsewhere to be under control of secretary in council, and no grant or appropriation of any part or any other Indian property to be made without the concurrence of a majority at a meeting of the council. Auditor of accounts of secretary in council to be appointed by the crown, s. 52. By s. 53, within the first fourteen days during which parliament may be sitting next after May 1st in every year, accounts to be laid before both houses by secretary in council of the financial year preceding of produce of revenues of India. By s. 54, when an order has been sent to India to *commence hostilities*, the fact to be communicated to parliament within three months after, if sitting, unless such order has meanwhile been revoked or suspended; if parliament be not sitting at the end of three months, then order to be communicated to it within a month after meeting. Except for preventing or repelling actual invasion, or under *other sudden and urgent necessity*, the revenues of India shall not, without the consent of both houses of parliament, be applicable to the expenses of any military operations beyond the frontiers by H. M.'s forces charged upon such revenues, s. 55. Existing Indian military and naval forces to remain under existing conditions of service, s. 56. Functions of Board of Control and E. I. C. directors, and salaries of chairman and directors, to cease. Books, records, and archives of the Company, except such as concern the ownership of stock and dividends, to be delivered into custody of secretary in council, s. 58. The new act to be proclaimed in the presidencies of India when as convenient after being received by the governor-general, s. 59. This act was amended in 1859, in relation to the execution and validity of contracts, by 22 & 23 V. c. 41. Under former act the local government and officers of the provinces were unable to enter into and execute contracts on behalf of the secretary for India as they had been on behalf of the East India Company. This deficiency in powers is supplied, and the secretary may be named as a party in contracts, but without any personal liability. The validity of interim contracts is guaranteed by s. 4. The Government of India can sue and be sued under the title of "The Secretary of State for India." Actions and suits in India to be carried on in *the name of the* secretary of state for India. *The maintenance of a separate European force for the local service being deemed inexpedient,* the 23 &

24 V. c. 100, repeals parts of former acts which authorize the secretary for India to give directions for raising such force for India. The 24 & 25 V. c. 54, confirms appointments, and amends the law relating to the civil service in India. The 24 & 25 V. c. 67, makes better provision for the constitution of the council of the governor-general, and for the local government of the presidencies and provinces. The 24 & 25 V. c. 89, increases the amount payable out of the revenues of India in respect of the retiring pay, pensions, and other expenses of the British forces. The 24 & 25 V. c. 104, establishes a high court of judicature for India, and is amended by 28 & 29 V. c. 15, which extends the term for granting letters patent for the high courts in India, and makes further provision respecting their jurisdiction. By s. 3, power is given to the governor-general to alter local boundaries of the courts, but power in the crown to disallow such alterations.

The 28 V. c. 17, enlarges the powers of the governor-general in council, at meetings for making laws respecting the territorial limits of the presidencies and lieutenant-governorships in India. Power to governor-general at judicial meetings to make laws for all British subjects within the dominions of princes and states in alliance with her Majesty.

CHAPTER III.

Constitution and Government of England.

THE supreme power in England is divided into the two branches of the legislative and executive; the former consists of the sovereign, the lords, and commons, in parliament assembled; the latter consists of the sovereign only.

There is little doubt that parliaments, or general councils of the crown, are coeval with the establishment of the kingdom. But the constitution of parliament, as it now stands, was more clearly defined in the year 1215, by Magna Charta, granted by King John, in which he promises to summon the clergy, nobility, and commons to meet at a certain place, with forty days' notice, to assess aids and scutages, when necessary. The constitution so promulgated has clearly subsisted from the year 1265, 49 Hen. 3, there being still extant writs of that date, to summon knights, citizens, and burgesses to parliament.

The parliament is summoned by the queen's writ, or letter, issued out of chancery, formerly forty, but after the union with Scotland, fifty, days before it begins to sit. But the time required to intervene between the date of the proclamation for assembling parliament, and the day appointed for the meeting thereof, was shortened in 1852 by 15 V. c. 23, enacting that the time for *the first meeting* of parliament after a dissolution may be any time *not less than thirty-five* days from the date of such proclamation.

It is a branch of the royal prerogative that no new parliament can be convened by its own authority, or by the authority of an except the queen only. But on the demise of the sovereign, if there be no parliament in being, the last revives, and continues for six months, unless sooner prorogued or dissolved by her successor. And in case of the queen's demise on or after the day of assembling a new parliament, such new parliament shall meet and sit, subject in like manner to the will of her successor.

A parliament may be holden at any place the queen may assign; and she may issue her proclamation for the meeting of it in fourteen days from the date, notwithstanding a previous adjournment to a longer period.

The power of proroguing and dissolving, as well as summoning parliament together, is vested in the crown. When it is resolved that parliament shall meet and sit on the day to which it is prorogued, notice is given by proclamation. And the language of the proclamation itself varies, so as to indicate a determination that the session shall then actually commence, the words "then and there to meet *for the despatch of business*" being included, which are omitted when it is not intended to meet on the day named.

Whether by the statute of 4 E. 3, c. 14, it is meant that parliament should be held *once* a year, or oftener, *if need be*, is not decided: nor is it very material now to inquire, because the Mutiny Act, the grant of supplies for the army and navy, and some other bills, being passed annually, it has become necessary for parliament to assemble *once* at least in every year; and the prorogation at the end of the session is in practice only for a limited time within the year; and, when that period expires, it is prolonged or not according to the exigencies of the public service.

Every parliament must be opened either by the queen in person, or by her commission or representative.

The power and jurisdiction of this body are so great as to have been styled omnipotent. Its authority extends over the whole of the United Kingdom, and all its colonies and foreign possessions. It has sovereign and uncontrollable authority in the making of laws. It can regulate and new-model the succession to the crown, as was done in the reigns of Henry VIII. and William III.; it can alter the established religion, as was done in the reigns of Henry VIII. and his children; it can change even the constitution of the empire and of parliament itself. An alien, though naturalized, is incapable of being a member of parliament.

PRIVILEGES OF PARLIAMENT.

The privileges of parliament were principally intended *to protect* its members, not only from being *molested in the discharge* of their legislative duties by *their fellow-subjects, but more especially* from being *oppressed by the power of the crown.*

By the 1 W. & M. st. 2, c. 2, it is declared, that "freedom of speech, debate, or proceedings in parliament, ought not to be impeached or questioned in any court or place out of parliament."

The privilege from arrest in civil causes is, in a peer, perpetual; and, in a commoner, during the sitting of parliament, and for forty days after its prorogation, and for forty days before the next appointed meeting; which is, in effect, as long as the parliament subsists, it seldom being prorogued for more than eighty days at a time.

In addition to these privileges of speech and person the right of members of either of the two houses of parliament to publish their own reports, papers, votes and other proceedings is specially protected by 3 & 4 V. c. 9.

But the privilege of parliament does not extend to treason, felony, breach of the peace, or any indictable offence; and in civil suits the law only protects the *persons* of members from arrest, not their property from sale or execution. They are, also, if in trade, subject to the bankrupt laws; and any trader having privilege of parliament, committing an act of bankruptcy, a petition may issue against him, and persons acting under it proceed thereon in like manner as against any other bankrupt.

In 1866 a new and uniform oath (the words of which were resettled by 31 & 32 V. c. 72) was provided by 29 & 30 V. c. 19, to be used by every member of either house on taking his seat in lieu of several oaths formerly required. The words of the prescribed oath, which is also the oath of allegiance, are as follows:—

> "I, A. B., do swear that I will be faithful and bear true "allegiance to Her Majesty Queen Victoria, Her heirs and "successors according to Law. So help me God.

Every person for the time being by law permitted to make a solemn affirmation or declaration instead of taking an oath may, instead of taking such oath, make a solemn affirmation in the above form, substituting the words "solemnly, sincerely, and truly declare and affirm" for the word "swear," and omitting the words "So help me God."

The oath is taken by peers and commoners at the table in the middle of the house, a full house being assembled, with the speaker in his chair, and at such hours and according to such regulations as each house may determine. Penalty £500 on a member of either house voting or sitting without having made and subscribed the parliamentary oath or affirmation.

It is part of the custom and law of parliament that no one shall sit and vote in either house unless he be of 21 years of age.

Thus much for the parliament in its aggregate legislative capacity; *it will next* be proper to speak more particularly of its constituent *parts—namely, the* queen, lords, and commons.

CHAPTER IV.

The Sovereign.

preme executive power is vested in a single person, either
r queen; and the person entitled to it, whether male or
is invested with all the ensigns and prerogatives of
nty.
right of succession is, by custom, hereditary, but this right
ritance has been changed or limited by the parliament;
rhich limitation the crown still continues hereditary—that
ndible to the next heir, being Protestant, male or female.
t is that the king is said *never to die;* but on the death of
ereign the kingship survives in his successor.
overeign cannot in judgment of law, as sovereign, ever be a
r under age; and therefore his royal grants and assents to
parliament are good at any time. It has, however, been
thought prudent, when the heir apparent is very young, to
a protector, guardian, or regent for a limited period.

SOVEREIGN'S COUNCILS.

consist of the high court of parliament, the *peers* of the
he *judges*, and the *privy council*.
eers are, by their birth, hereditary counsellors of the crown,
y be summoned to impart their advice in all matters of
nce to the kingdom; or, they may individually demand an
e of the queen, and respectfully lay before her Majesty such
as they judge important to the public welfare.
judges are the queen's counsellors in matters of law, and
required to advise the crown in all affairs of legal difficulty;
ce is now usually discharged by the attorney and solicitor
of her Majesty.
the rise of the cabinet, the most responsible and influential
of the crown in state affairs were the *privy council*. The
of its members is indefinite, and at the pleasure of the
but they must be natural-born subjects. By 6 Anne, c. 7,
during the life of the queen, who nominates them, subject
val at the royal discretion. On the demise of the crown
ntinue for six months, unless sooner determined by the
r.
erly, a privy councillor enjoyed privileges in respect of
l security, but these were abolished by 9 G. 4, c. 31; and
nce against a privy councillor stands on the same footing as
against any other individual. By his oath he is bound to
the queen without partiality, affection, or dread; to keep
nsel secret, to avoid corruption, and to assist in the execu-

tion of what is there resolved. The council has power to inquire into all offences against government, and commit the offenders to take their trial in some court of law. In matters of property belonging to subjects, in this kingdom, the privy council cannot take cognizance; but in colonial and maritime causes arising out of the kingdom, and in cases of lunacy and idiocy, though they involve questions of property, the privy council may take cognizance, being the court of appeal. In the exercise of its appellative functions, the council is assisted by a recent institution, called the judicial committee of the privy council, of which notice will be hereafter taken, and which comprises the chief legal functionaries of the kingdom.

That portion of the privy council denominated the CABINET does not form a recognized part of the ancient constitution of England. In practice, however, it is the most important branch of the government, comprising the ministers of state and great public officers, who constitute the really efficient and responsible servants and advisers of the crown. They are, in fact, the executive government of the kingdom, pending the time they hold office, which is usually so long as they can command a majority of the House of Commons.

The number and selection of the cabinet council depend on the queen's pleasure, under the advice of the prime minister whom she may have chosen to form an administration; and each member receives a summons or message for each attendance. In like manner, no privy councillor attends, unless individually summoned for the particular occasion on which his assistance in council is required.

DUTIES OF THE SOVEREIGN.

By the oath administered at the coronation, the sovereign solemnly promises to govern according to the statutes, the laws, and customs of the realm; to cause law and justice, in mercy, to be executed in all her judgments; to maintain the laws of God, the profession of the gospel, the Protestant reformed religion, and the church as by law established. This solemn engagement is considered a fundamental and express contract between the sovereign and the people.

ROYAL PREROGATIVES.

By the royal prerogatives are meant certain privileges enjoyed by the sovereign, in virtue of the regal office.

The queen is the supreme magistrate of the nation, all other magistrates acting by commission from, and in due subordination to, her: she has the exclusive right of sending ambassadors, of creating *peers, of making* war and peace; she may reject any parliamentary *bill she pleases;* and pardon any offences, except where the law has

nterfered. The royal pardon cannot be pleaded in an ent, but it may be subsequently given; nor can the crown to which informers have claim.

one has a demand on the queen in point of property, he on the court of Chancery, where the lord chancellor will r right as a matter of grace, and not of compulsion. But ition of right or claim against the crown, the procedure escribed by 23 & 24 V. c. 34, and assimilated to that rivate persons.

actions relating to landed property, the sovereign, like a limited to sixty years; and, after fifty-five years' pos- grant from the crown may be presumed, unless a statute ited such a grant. *Parker* v. *Baldwin*, 11 E. R. 488. 40 G. 3, c. 88, vests in the sovereign the same rights in ition and testamentary disposition of real and personal s in subjects. Similar rights of private property by the to a queen consort.

naxim, the sovereign *can do no wrong*. If the queen be make any improper grant to a subject, or be guilty of public oppression, it is presumed she has acted under ace of weak or wicked ministers, who may be punished ient or parliamentary impeachment.

ereign is not bound by any statute, unless expressly erein; yet if a public act be made which does not inter- the rights of the crown, it is said to be as binding upon as upon the subject; and though she be not specially any act, her Majesty may, if she please, take the benefit

een cannot be a joint tenant, and it is provided that her be preferred before any of her subjects. Up to 1855, , except in certain fiscal cases, neither recovered nor paid t this practice is abolished by 18 & 19 V. c. 90; and the all suits, if successful, may recover costs, as between id subject, and the defendant, if successful, is entitled to nst the crown.

een is the head of the *army* and *navy*, and has the all forts and garrisons within the realm. She has the establishing ports and havens. She may prohibit the on of arms and ammunition, and confine her subjects e realm, or recall them from abroad, on pain of fine and nent.

the head of the *established church*, and has power to prorogue, and dissolve the houses of convocation. In this prerogative arises the right to nominate to vacant and other ecclesiastical preferments. She is the dernier all spiritual matters, an appeal lying to the judicial of the privy council from the sentence of every eccle- dge.

The queen has the right of granting passports to subjects of different nations. In the regulation of domestic trade she has the prerogative of establishing markets and fairs, with tolls, of regulating weights and measures, of giving authenticity to the coin, and making it current as the universal medium of exchange.

The queen is the *representative of the public*, and criminal proceedings for offences are in her name. She has the power of erecting courts of judicature, but cannot administer justice personally, since she has delegated that power to her judges.

Lastly, the queen is the *fountain of office, honour, and privilege*. All degrees of title are by her immediate grant. She has the right of granting precedence to any of her subjects, except to the nobility, whose precedence is fixed by statute; of converting aliens into denizens, and of erecting corporations.

By 1 V. c. 72, in case of her Majesty's demise, the archbishop of Canterbury, lord chancellor, lord high treasurer, lord president of the council, lord privy seal, lord high admiral, and the chief justice of the Queen's Bench, are appointed lords justices to exercise the regal powers until the arrival in the kingdom of the next successor to the crown, provided such successor is absent at the time of the queen's decease. Lords justices are not empowered to create peers nor dissolve parliament.

REVENUES OF THE CROWN.

The queen's, or more correctly the public, revenue is either *hereditary* or *parliamentary*. The *hereditary* revenue is that which has subsisted in the crown from time immemorial; or else has been granted by parliament in exchange for such crown revenues as were found inconvenient to the public. The *parliamentary* or general revenue is the various taxes levied by the authority of parliament.

Of the *hereditary revenues* the principal are—1. The lay revenues of vacant sees, the first-fruits and tenths of spiritual preferments, and all tithes arising in extra-parochial places. 2. The demesne lands of the crown, consisting of estates, woods, forests, manors, honours, and lordships. 3. Fines, forfeitures, and fees accruing in courts of justice. 4. A tenth part of *royal fish*, which are whale and sturgeon, when either thrown on shore or caught near the coast. 5. Mines of gold and silver. 6. Treasure trove, which is the treasure found hid *in* the earth, of which no owner appears: but it seems, from *Armory* v. *Delamere*, this does not extend to treasure, as gold, diamonds, money, or other valuables, found in the sea, or *upon* the earth; which belong to the finder, if no owner appears. 7. Waifs, which are goods stolen and thrown away by the thief in his flight; but the courts may, by 7 & 8 G. 4, *c. 29, order restitution* of waifs, or other stolen goods, to the *owner. 8. Estrays*, or animals found wandering, the owner of

h is unknown. 9. Lands and goods forfeited for offences; nchants of land, which happen on defect of heirs to succeed inheritance; but by 3 & 4 W. 4, c. 106, lands forfeited by der do not prevent inheritance. 10. Droits of the crown dmiralty; being the proceeds of wrecks and goods of pirates. he revenues of the duchies of Cornwall and Lancaster, ng the infancy of the Prince of Wales. Lastly, the profits ng from the custody of the property and persons of idiots natics.

t of these branches of the hereditary revenues have fallen mutude, or have been granted to private individuals, or at the disposal of the legislature; so that, except the duchies wall and Lancaster, they add little or nothing to the royal . In lieu of the hereditary revenues of the crown, a fixed sum, under the denomination of the *civil list*, is granted iament at the commencement of a new reign for the support sovereign and the royal household. This sum is payable the parliamentary revenue, or that great mass of public arising from the various taxes imposed by parliament, and portion of which is applied to the payment of the interest public debt, the maintenance of the army and navy, and ministration of justice, and other matters connected with ional government.

THE QUEEN AND ROYAL FAMILY.

queen is either queen *regnant*, queen *consort*, or queen r. The queen *regnant* is she who holds the crown in her ht, as Queen Elizabeth, Queen Anne, or Queen Victoria: ne, in her public capacity, in all respects fills the office of aving the same rights, prerogatives, duties, and dignities; that has been or may hereafter be said of the functions of l office may be considered as applicable and pertaining to eat Majesty as sovereign of the realm.

queen *consort*, or wife of the king, is a public person, ; peculiar privileges. She can purchase land and make ithout the concurrence of her lord; she can also take a om her husband, which no other wife can; she may also be sued alone, without joining her husband. In short, n all legal proceedings considered a single, not a married ; and the common law has established this to prevent the ng troubled with his wife's private affairs.

olate the queen consort's person is high treason, as well iolator as the queen herself, if consenting.

en *dowager* is the widow of the preceding king, and as joys most of the privileges to which she was entitled as nsort. But it is not high treason to conspire her death,

or to violate her chastity, because the succession to the crov not thereby endangered.

The husband of a queen regnant, as Prince George of Denr was to Queen Anne, or the late Prince Albert to Queen Victori her subject, and may be guilty of high treason against her; in the instance of conjugal infidelity, he is not subject to the s penal restrictions. For which the reason seems to be, that, queen consort is unfaithful to the royal bed, this may deba bastardize the heirs to the crown; but no such danger can i from the infidelity of the husband to a queen regent.

The *Prince of Wales*, or heir apparent to the crown, and consort, and also the princess royal, or eldest daughter of queen, are peculiarly regarded by the laws. To conspire the d of the former, or violate the chastity of the latter, is high trea

By the rest of the *royal family* is understood the younger and daughters and other relatives of the sovereign, who possibly inherit the crown, though not immediately in the lin succession. These have precedence before all peers and office state, ecclesiastical or temporal. The education of the presu tive heir to the crown is under the control of the sovereign; no prince of the blood can marry without the sovereign's cons unless he be twenty-five years old; nor even then, without tw months' notice being given to the privy council; or if, in the co of these twelve months, parliament expresses its disapproba of the marriage. A marriage otherwise entered into will be v the minister and all persons present incurring the penalties *præmunire*.

CHAPTER V.

House of Lords.

THE House of Lords forms the second or hereditary branc the constitution; exclusive of the royal princes, they are ei *spiritual* or *temporal;* the former consist of the two archbis and the twenty-four bishops of the English church. The spiri lords are not considered peers, but merely lords of parliament, hold, or are supposed to hold, certain ancient baronies under king.

The *lords temporal* consist of all peers of the realm, bein full age and not mentally incapacitated: the number of these be increased at the pleasure of the crown. Sixteen temporal g are chosen by, and sit as representatives of, the peers of Scotl twenty-eight represent the nobility of Ireland. Scotch peers elected only for one parliament; the Irish peers for life; the of the peerage hold by descent or creation.

That the queen may be informed of the decease of a repres *tive peer, in order* to the election of another, the 14 & 15 V. c

provides that a certificate from two peers of Scotland shall be held to be formal notice of the death of any representative peer, sufficient for the issue of a proclamation for the election of his successor. Owing to increased facilities for communication, the time for the issue of the proclamation, prior to the election, is reduced from twenty-five to ten days. By s. 3, Scotch peers may take the oath, and subscribe the declaration in order to vote by proxy in the superior courts of law in Ireland, same as in England. Titles of peerages, in right of which no vote has been given for fifty years, not to be called at election, if the House of Lords shall so direct.

The total number of members of the House of Lords, in 1870, was 475, and comprised the subjoined classes, inclusive of eight minors:—

Princes of the blood royal . . .	4
Dukes	20
Marquises	18
Earls	110
Viscounts	23
Barons	230
Peers of Scotland (elected 1868) . .	16
Peers of Ireland (elected for life) . .	28
English archbishops and bishops . .	26
Total .	475

There were also in 1870 nine ladies peeresses in their own right, unable by reason of their sex to sit and vote in the House of Lords.

FUNCTIONS AND PRIVILEGES.

The House of Lords has two distinct functions, the *legislative* and *judicial*. Its legislative functions it exercises in concert with the sovereign and the House of Commons, and every new statute must have the assent of the crown and a majority of each house of parliament. In its judicial capacity, the House of Lords is a court for the trial of criminal offences on impeachment by the commons, and of peers on indictments found by a grand jury. The lords may require the attendance of the judges of the superior courts of law to advise them in their judicial duties. But the judicial character of the House of Lords has been nearly entirely taken away by an act of the present session (1873), soon to be considered.

A peer may vote by proxy, which is a privilege denied to the members of the commons; but in judicial causes, or in committee, a peer cannot vote by proxy.

All bills that in any way affect the rights of the peerage must originate in the house of peers, and undergo no change or alteration in the commons.

Whether the peers have a right to continue a tax w commons have repealed, as in the case of the paper duty a contested privilege in the session of 1860. No precedent to have been adduced to show that such power of negat ever been exercised except in regard to imposts of trivial or connected with some question of national policy. In sent instance the inadequate provision made by the comi the public expenditure was alleged, but the commons, resolutions, declined to acquiesce in this plea. If, howev has been imposed, it cannot be repealed by the commons the assent of the lords.

Each peer has a right, by leave of the house, when a vo contrary to his sentiments, to enter his dissent on the jo the house, with the reasons of such dissent; which is s *protest.*

A peer sitting in judgment gives not his verdict upon o a commoner, but upon his honour. He answers also chancery upon his honour, and not upon his oath. But is summoned as a witness, either in civil or criminal must be sworn. In criminal trials, on arraignment, h required, like other culprits, to *hold up his hand.* actions, his house cannot be searched by the sheriff wit authority of a royal warrant. He is privileged to sit co the bench in courts of law, and to give his opinion to t He is exempt from civil offices, but may exercise the p justice of peace in any part of the kingdom, where he h be present.

Peers are created either by *writ* or by *patent.* The cr writ, or the queen's letter, is a summons to attend the peers by the style and title of the barony which the pleased to confer; that by patent is a royal grant to the any dignity and decree of peerage, as baron or viscount.

Since 1871, when the Bankruptcy Disqualification passed, no peer who becomes a bankrupt can sit or vo House of Lords, or in any committee of it, and if he be Scotland or Ireland, he cannot be elected to sit and vot house. Any peer, however, who has become bankrupt the event of his bankruptcy being determined, sit and before in the House of Lords.

When a peer of the realm is newly created, he is i into the house of peers by two lords, of the same form robes, garter king at arms going before; and his lord present his writ of summons to the lord chancellor, wh read, he is conducted to his place. Lords by descent duced with the same ceremony, the presenting of excepted; but lords by descent, of the age of 21, *without introduction.* *May on Parliament*, 136.

CHAPTER VI.

House of Commons.

This forms the third and popular branch of the legislature, representing the commons of the United Kingdom.

All grants for raising the supplies to meet the expenditure of government must originate in and pass the House of Commons, though they cannot have the force of law without the assent of the other two branches of parliament.

The lords may reject the grants of the commons altogether, if they think them too lavish, but cannot make any alteration or amendment in a *money bill*, under which appellation is included all sums directed to be raised on the people for public purposes. And this rule is now extended to bills for canals, paving, provision for the poor, and to every bill in which tolls, rates, or duties are ordered to be collected; also to bills in which pecuniary penalties and fines are imposed for offences. 3 *Hats.* 110.

I. QUALIFICATIONS OF MEMBERS.

Every subject of the realm is eligible as a member of the House of Commons, subject to certain restrictions and disqualifications.

Minors, insane persons, denizens of letters patent, naturalized persons, Scotch peers, Irish representative peers, and all Irish peers for any constituency in Ireland, are disqualified from becoming members of the House of Commons. Any person who has been convicted of treason, treason felony, or felony, or who has been outlawed in a criminal prosecution is ineligible for election. Any candidate for election, who shall be reported under the Parliamentary Elections Act, 1868, by the judge to have known and consented to the commission of bribery at his election, and any other person found guilty of bribery in any proceedings in which, after the notice of the charge, he has had an opportunity of being heard, is disqualified from serving in the House of Commons for seven years.

The offices or employments which incapacitate for a seat in the House of Commons are too numerous to be all mentioned here, but the following are among the most important: Judges of the superior courts in England and Ireland (excepting the English Master of the Rolls), or of the English county courts, or of the court of session or exchequer in Scotland; commissioners of the court of bankruptcy; commissioner of the City of London police; and (within their respective jurisdictions) sheriffs of counties, returning officers of boroughs, recorders, and revising barristers, Irish chairmen and assistant barristers, clergy of the church of

England, of Ireland, Scotland, or Rome, any perso
office of profit under the crown created since the 25
1705, and any person holding a royal pension.

When any member of the House of Commons is d
rupt he is incapacitated from sitting or voting, a
expiration of twelve calendar months, his debts be
security given for them, nor his bankruptcy super
becomes vacant. Any person holding any contract
ment on account of the public service (except i
members of incorporated bodies) is disqualified, and
so disqualified shall sit in the house, he shall forfeit
And if any person who contracts with government
member of parliament to share in it he shall forfei
prosecutor. But an army clothier who contracts wi
of a regiment, or his agents, to furnish clothing fo
ment is not disqualified. *Thompson* v. *Pearce*, 3 M

Any person, already chosen a member of the H
mons (and not being an officer in the army or na
new commission), who shall accept any office of p
crown by 6 Anne, c. 7, s. 26, vacates his seat there
the previous section (s. 25) of the same act, if the
created prior to the 25th of October, 1705, he is ca
re-elected, and since 1867 no necessity for re-elec
arise where a person has been elected since his acc
following offices (*see* 30 & 31 V. c. 102, s. 32)
Treasurer; Commissioner for executing the offices o
the Exchequer of Great Britain and Lord High Tre
land; President of the Privy Council; Vice-Pre
Committee of Council for Education; Comptroller,
Vice-Chamberlain of Her Majesty's Household;
Groom-in-Waiting on Her Majesty; any Principal
State; Chancellor and Under-Treasurer of Her Ma
quer; Paymaster-General; Postmaster-General; L
miral; Commissioner for executing the office o
Admiral; Commissioners of Her Majesty's Work
Buildings; President of the Board of Trade; Chief
Ireland; Poor Law Commissioner; Chancellor of
Lancaster; Judge Advocate-General; Attorney-Ge
land or Ireland; Solicitor-General for England,
Ireland; Lord-Advocate for Scotland.

By 21 & 22 V. c. 104, s. 5, not more than four
state, and four under secretaries of state, are qual
the House of Commons. By an act of 1865, 27 &
a member accepting the office of under secretary wh
secretaries are sitting in the house becomes incapable
being elected a member during the time he holds su
s. 2, if during a general election more secretaries an
taries are elected than four of each class, no one of s

as the house shall think a sufficient excuse for non-
The usual way of vacating a seat is by accepting a
f profit, by which the law declares the seat vacant.
abers wish to do this, and retire from parliament, it is
for the crown to grant them the office of the steward-
Chiltern Hundreds, or of East Hendred.

II. QUALIFICATIONS OF ELECTORS.

AND WALES.—The qualifications of county electors
e considered.
ors of knights of shires (or members of counties or
f counties) have always been required by law to be
the possession of a freehold estate, of the yearly value
40*s.*; but in 1832 new provisions were made by the
t of that year, and the electors were, for the first time,
to a system of registration; and in 1867 the Re-
n of the People Act (30 & 31 V. c. 102) was passed,
with the whole subject.
s or tenements, in respect of which a vote may be
a county, may now be of any tenure, and may be held
r life, or for a term of years, or by mere occupation.
e or mortgagee can vote, unless in actual possession of
nd profits of the estate: but the mortgagor, or *cestui*
possession, notwithstanding the mortgage or trust, may

n is qualified to vote for the county in respect of any
use occupied by himself, nor copyhold or leasehold
ther occupied by himself or another, if such occu-

qualified to vote if their property be of the clear annu
£5 over and above all rents and charges payable out
respect of the same.

Lessees or assignees of tenements, of whatever tenu
unexpired residue of any term originally created for no
sixty years (whether determinable on a life or lives, c
the clear yearly value of £5 above rents and charges;
unexpired residue of any term originally created; for no
twenty years, of the clear yearly value of £50; provide
sub-lessee, or assignee of any under lease, shall have
vote in respect of such term of sixty or twenty years, u
in the *actual* occupation of the premises, are qualified to

Occupiers, as tenants, of any lands or tenements, a
rent of not less than £50, are qualified to vote by th
Act of 1832, and all occupiers, as owners or tenants, of
or tenements, within the county, of the rateable value
year or upwards are qualified by the Representatio
People Act, 1867. It is necessary that the voter, in
enable him to vote, shall in all cases have been duly re
such. The overseers of every parish and township are
(by 6 & 7 V. c. 18, and 28 & 29 V. c. 36), on or before
of June in every year, to call, by public notice, on a
entitled to vote for the county, who are not already on
ter, or who have changed their qualification or abode, to
them a notice of claim in writing before the 20th of J
same year; and the overseers are to make lists of pe
have sent in such notices accordingly. Such overseers a
required (by 30 & 31 V. c. 102) to cause a list of all
be made out on whom a right to vote for the county in
the occupation of premises of a certain rateable value i
the Representation of the People Act, 1867.

The act 28 & 29 V. c. 36, just quoted, amends the la
to the registration of *county voters* and the duties of
barristers. By s. 2, clerk of the peace, on or before J
every year, to deliver precept to the overseers of the poo
parish or township within his county. Overseer to
sufficient number of copies of register on or before Jun
remove the same after a period including two Sundays at
later than the 20th day of July. August 20, last day
notice of objection to the overseers and to the person ob
September 1, last day for the delivery of papers by th
to the clerk of the peace. Grounds of objection to a
to be specified in notice of objection to any person on
claimants according to the seventh section of the prin
the 6 & 7 V. c. 18. By s. 7 of the present act, no pe
required to give evidence before the revising barrister i
of his right to be registered otherwise than as such rig
called in question in the grounds of objection. Each

is the qualification to which the declaration relates. as may be perused at the clerk's office without fee, or tained at 4*d*. per folio of 72 words. Falsely signing such , a misdemeanor, punishable with fine or imprisonment. for revision of county lists to be held before September of revision in cases of objection not to exceed £5 each. arristers to read out names expunged or inserted either city, or borough.

l chief justice of the court of Queen's Bench and the assize appoint the revising barristers; and, where two arristers are appointed for the same district, they may ate courts. The barrister notifies his appointment to of the peace, or the town clerk; and such clerks are, as sible, to transmit to him abstracts of the lists of claim- objections, that he may fix a time and place for holding urts. Ten days' notice must be given of the holding rts, which must be at the polling or other appointed ey are open courts; but counsel are not to attend, attor- agents being employed. Overseers are to furnish the rith all the information in their power, to enable him to list. For the like purpose collectors and officers having y of the tax assessments and vote books must, on being roduce them before him.

son on the list of voters may object to claimants in any y, or borough, on giving notice in writing to the bar- is intention before the hearing of the claim. Notices of nust have been previously delivered to the overseer, and ected to, on or before the 25th of August. Voters ob- nust appear in the revision court to prove their qualifica- their names will be expunged. Appeal from the bar-

as lessee, assignee, occupier, or tenant, unless in possession or r ceipt of rents and profits for *twelve* months, with an exception case of property coming by descent, marriage, marriage settlemen succession, devise, or promotion to any benefice in a church, or any office.

We may next consider the qualifications of electors of membe to represent the cities and towns.

Until the passing of the Reform Act of 1832, the right of ele tion of members of cities and boroughs depended entirely upon th several charters, customs, &c., of the respective boroughs; but i 1832 it was settled that the right of voting consisted, first, certain ancient rights reserved during the lives of the voters i the enjoyment of them in 1832; secondly, of certain other ancie rights reserved in perpetuity; and, thirdly, of a new right giv by the Reform Act, 1832.

It is not necessary to consider in a work like the present the fir two classes: we will, therefore, deal at greater length with the whose franchise was newly conferred in 1832.

The constituency created by the Reform Act, in addition to th *old voters*, in CITIES and BOROUGHS, are, if duly registered, eve owner, tenant, or occupier (if rated, and an independent occupa of any house, warehouse, counting-house, shop or *other buildin* being, either separately or jointly, with any land occupied *ther with*, under the same landlord, of the clear yearly value of £1(but the voter must have occupied for twelve months next previo to the last day of July—have been rated in respect of his premi to all poor-rates—and must have resided, for six calendar mont next previous to the last day of July, within the city or borou or within seven horizontal miles. Poor-rates and assessed ta due Jan. 5, must be paid on or before July 19 by all electors cities or boroughs, or they will be disqualified from voting at election.

To remedy the inconvenience of making a renewed claim in t registration of compound householders, the 14 & 15 V. c. enacts, that persons having *once* claimed in respect of premi and paying or tendering, on or before July 19, the rates Jan. 5 preceding, shall not be required to renew their claim. liability of the claimant to rates to continue so long as he occu the premises and remains a registered voter. Compositions with l lord, if any, to determine amount of rate to which tenant is li

Premises entitling to vote need not be the same premises may be different premises occupied in intermediate succession.

In case of *joint occupation*, each occupier may vote, if the a gate clear yearly value amount to £10 for each occupier.

Occupiers may demand to be rated, whether the landlo liable or not to be rated, on tender of the full amount of the due.

Every person formerly entitled to vote in a city or borough

itled to vote, if duly registered; but no person can
ed in any year, unless on the last day of July in such
d been qualified to vote, had such been the day of
ior to the Reform Act; nor unless he had been resident
endar months next previous to the last day of July;
where a burgess or freeman of any place sharing with
orough, he shall have been resident in such place six
rt previous to the last day of July; but no person
urgess or freeman since March 1, 1831, or hereafter, or
han in respect of *birth* or *servitude*, can vote as such,
ered.
n is eligible to be registered who, within twelve calen-
s next previous to the last day of July, has received
lief or other alms.
em of parliamentary representation continued till 1867,
Representation of the People Act was passed, by
fresh qualifications were made; namely, first, in re-
ing "an inhabitant occupier" (which introduces the
household suffrage), and, secondly, in respect of being

:ts the *occupation franchise* in boroughs, every man, in
ie year 1868, is entitled to be registered as a voter,
egistered is qualified to vote for a member, if he is of
the last day of July in any year, and has during the
e preceding twelve calendar months been an inhabitant
s owner or tenant, of any dwelling-house within the
d rated to all rates (if any) made for the relief of the
pect of such premises. He must, on or before the
ay of July in the same year, have paid an equal amount
l to that payable by other ordinary occupiers in respect
ates that have become payable by him in respect of such
to the preceding fifth day of January. But the occu-
be absolute and entire, not a joint occupation of a
use.
ification of a *lodger* is similar: his occupation must be
l it must be of the clear yearly value of £10 annually
rnished; he must have resided twelve months, and
be registered as a voter at the next ensuing registration

ner of registration is, in general, similar to that for
it no elector, except in the case of a lodger, need make
l no person, though registered, is entitled to vote, unless
ation as to residence shall have continued to the time of

.—Under the Reform Act for Scotland the old rights
uffrage are preserved to those individuals who were in
ession of them, March 1, 1831, provision being made
r perpetuation. The new county electors created are—

owners to the value of £10 a year; leaseholders for fifty-nine y or for life, whose clear yearly interest is not less than £10; le holders for nineteen years, the yearly interest *not* being less £50; yearly tenants whose rent is not less than £50 per ann and *all* yearly tenants who have paid for their interest in t holdings not less than £300. In the *borough*, the suffrage e sively exercised prior to 1832 by the town councils has abolished, and the £10 qualification, by ownership or occup substituted in its place, with the like conditions as in Englan twelve months' previous occupancy, payment of assessed t registration, and exemption from parish relief.

Since 1868, when the Representation of the People (Scotl Act was passed, every man is entitled to be registered as a for a member of parliament for a burgh who has been, for tw calendar months next preceding the last day of July, either a habitant occupier as owner or tenant of any dwelling-house wi the burgh, or a lodger occupying separately and as sole te lodgings, in the same burgh, of a clear yearly value, if let u nished, of £10 or upwards; but no man is entitled to be regis by reason of his being a joint occupier of any dwelling-h Every man is also, since 1868, entitled to be registered as a for a county member who, for a period of six calendar months preceding the last day of July, has been the proprietor of l and heritages, as appearing from the Valuation Roll of the co of £5 and upwards, after deduction of feu duty, ground an or other annual consideration, which he may be bound to pa give, or account for as a condition of his right, and of any an or such other annual burden; or who has been in the actual sonal occupancy as tenant of lands and heritages within the co of the annual value of £14 or upwards, as appearing on the Valuation Roll. But in the case of the occupation franchi counties or burghs, no man is entitled to be registered as a who, at any time during this period of twelve calendar mo shall have been exempted from payment of poor-rates on ground of inability to pay, or who shall have failed to pay b the twentieth of June in any year all poor-rates that have be payable by him up to the preceding fifteenth of May, in the of counties, in respect of his lands and heritages; and in case of burghs, in respect of his dwelling-house, or who have been in receipt of parochial relief within the same tw months.

IRELAND.—The freehold suffrage for the counties in this div of the empire was raised in 1829 from 40*s.* to £10, and conti by the Reform Act. In addition, the new electors created a 1, the £10 copyholders; 2, lessees or assignees having a yearly interest of £10 in leaseholds for sixty years or upward *of £20 in leaseholds* of not less than fourteen years, wheth *their actual occupancy* or not; 3, sub-lessees or assignees of

under-lease in either of the two cases just mentioned actually occupying; 4, the immediate lessees or assignees having a £10 yearly interest in £20 lease and actually occupying. In 1850 county voters were increased, and by 13 & 14 V. c. 69, occupiers of lands rated for the poor-rate at a net annual value of £12 or upwards, and registered under the act, are qualified to vote at elections. In the boroughs the £8 (reduced by the Representation of the People (Ireland) Act, 1868, to £4) ownership or occupancy was made the basis of the suffrage, coupled with the conditions of registration, six months' previous occupancy, and the payment of all rates due for more than one half-year. No alteration has been made in the county franchise by the Representation of the People (Ireland) Act, 1868.

UNIVERSITIES.—The Universities of Oxford and Cambridge have enjoyed the privilege of returning two members each to the House of Commons since the time of James the First. A like privilege of returning two members was conferred on Dublin University by 2 & 3 W. 4, c. 88, which previously returned but one member, and a privilege of returning one member on London University by the Representation of the People Act, 1867. A like privilege of returning one member was conferred on the Universities of Edinburgh and St. Andrews jointly, and on the Universities of Glasgow and Aberdeen jointly, by the Representation of the People (Scotland) Act, 1868. In the Universities the electoral suffrage is independent of residence, property, or occupancy, being vested, in the case of Oxford and Cambridge, in the doctors and masters of arts, so long as they keep their names on the books of their respective colleges; in the case of the University of Dublin, in the fellows, scholars, and graduates, on the like condition of registration: in the case of the University of London, on the graduates constituting the convocation of the University whose names are for the time being on the registry; and in the case of the Scotch Universities, in the members of the general council whose names are likewise registered.

As the Ballot Act, 1872 (to be considered hereafter), does not, so far as the method of voting is concerned, apply to the Universities, it will be convenient to notice here that electors of members for the Universities may, in lieu of attending to vote in person, nominate any other elector competent to make the prescribed declaration, to deliver at the poll voting papers containing their votes for candidates. Form prescribed for voting paper, and to be attested by a justice of peace, with full name and address. Voting papers may be inspected and objected to by any person entitled to object to votes. Falsifying voting paper, or making a false answer to any question by a returning or other officer, punishable by fine, or imprisonment not exceeding one year.

The members representing the several divisions of the empire elected in 1868 were—

English and Welsh	County Members	186	
	University Members	5	
	City and Borough Members	302	
			493
Scotch	County Members	33	
	University Members	2	
	City and Borough Members	25	
			60
Irish	County Members	64	
	University Members	2	
	City and Borough Members	39	
			105
			658

In 1870 the following boroughs, it having been reported by t judges who presided at the hearing of the election petitions th corrupt practices extensively prevailed in them at the last gene election, were disfranchised—Bridgewater, Beverley, Cashel, N wich, Sligo.

III.—PROCEEDINGS AT ELECTIONS.

The method of proceeding at elections is regulated by seve statutes. The most important of these is the Ballot Act, 18 (35 & 36 V. c. 33), by which secret voting has been for the fi time introduced in both municipal and parliamentary electio The Ballot Act extends to Ireland and Scotland, and repeals statutes inconsistent with the new principle of secret voting. expires on the 31st of December, 1880, unless parliament sh otherwise direct. We shall next state shortly the method of p cedure at elections as regulated by the various statutes in force.

The lord chancellor, when a parliament is summoned, sends warrant to the clerk of the crown in Chancery, who thereu issues a writ to the returning officer of every county or boro for the election of members to serve for the respective counti divisions of counties, or boroughs.

After the parliament is assembled, and during its continuan the House of Commons alone has the right of issuing warrants fill up vacancies; or during the recess by prorogation or adjou ment, the speaker has authority to issue his warrant; but member may, during the recess, accept the stewardship of t Chiltern Hundreds, or of the manors of East Hendred, Northste or Hempholme, or of the escheater of Munster.

The returning officer is required, in the case of a county electi within two days after the day on which he receives the writ, and *the case of a* borough election, on the day on which he receives t *writ or the following* day, to give public notice, between the hou

orning and four in the afternoon, of the day on
ace at which he intends to proceed to an election,
appointed for the election, and of the day on which
aken in case the election is contested, and of the
; which forms of nomination papers may be ob-
se case of a county election is required to send one
by post, under cover, to the postmaster of the
ice of each polling place in the county, endorsed
"Notice of election," and the same is to be for-
harge; and the postmaster is to publish it forth-
f election is to be fixed by the returning officer in
ection for a county or a district borough not later
lay after the day on which he receives the writ,
of not less than three clear days between the day
s the notice and the day of election; and in the
n for any borough other than a district borough,
e fourth day after the day on which he receives
interval of not less than two clear days between
he gives the notice and the day of election.

ius appointed the election takes place. The prin-
ction is to be a convenient room in the town in
on is to be held. The time appointed for the
such two hours between the hours of ten in
three in the afternoon, as may be appointed by
cer, who must attend during the two hours and
r. All candidates are to be nominated in writing,
e subscribed by a proposer and seconder and eight
electors of the county or borough for which elec-
This writing is to be delivered up to the returning
time appointed for the election, and if no more
nominated at the expiration of one hour then
es to be filled up, the nominated candidates are
ected, but if otherwise, the returning officer is to
tion, and, as soon as practicable after the adjourn-
ublic notice of the day on which a poll is to be
the candidates described as in their respective
s, and of the names of the persons who subscribe
paper of each candidate, and of the order in
es of the candidates are to be printed in the
nd, in the case of an election for a county, to
stmaster of the principal post office of a town in
he place of election a paper, signed by himself, con-
s of the candidates nominated, and stating the day
ll is to be taken, and the postmaster is to forward
ontained in such paper by telegraph, free of charge,
tal telegraph offices situate in the county for which
be held, and such information is to be published
th such office in the manner in which post-office

notices are usually published. The polling day, in the case of an election for a county or district borough, is not to be less than two nor more than six clear days, and in the case of a borough not being a district borough, more than three clear days, after the day fixed for the election. A sufficient number of polling stations is to be provided at each polling place by the returning officer, who is required to distribute them as he thinks most convenient, but it is necessary that in a district borough there should be at least one polling station at each contributory place. Each polling station is to be furnished with a sufficient number of compartments for voters to mark their votes, screened from observation, but there must be one compartment for every 150 electors entitled to vote at the polling station. No person is to be permitted to vote at any polling station except the one allotted to him. No inquiry is allowed at polling, except as to the identity of the voter, and whether he has already voted at the same election. Persons excluded from the register by the barrister may tender their votes at the election, and such tender be recorded.

By 6 V. c. 18, s. 79, the register is to be deemed conclusive evidence of the voter's retaining his qualification.

Voters residing out of the polling district to which the parish belongs wherein their qualification is situated, may vote in another district, on making a claim before the revising barrister.

The ballot of each voter is to consist of a paper showing the names and description of the candidates. Each ballot paper is to have a number printed on the back, and to have attached a counterfoil with the same number printed on the face. At the time of voting, the ballot paper is to be marked on both sides with an official mark, and delivered up to the voter within the polling station, and the number of such voter on the register of voters is to be marked on the counterfoil, and the voter having secretly marked his vote on the paper, and folded it up, so as to conceal his vote, is to place it in a closed box, in the presence of the officer presiding at the polling station, after having shown to him the official mark at the back.

Any ballot paper which has not on its back the official mark, or on which votes are given to more candidates than the voter is entitled to vote for, or on which anything, except the said number on the back is written or marked, by which the voter can be identified, is to be void and not counted.

After the close of the poll the ballot boxes are to be sealed up, so as to prevent the introduction of additional ballot papers, and are to be taken charge of by the returning officer, and that officer, in the presence of such agents, if any, of the candidates as may be in attendance, is to open the ballot boxes, and ascertain the result of the poll by counting the votes given to each candidate, and forthwith to declare to be elected the candidates or candidate to *whom the majority* of votes have been given, and return their

sions are contained in the Ballot Act for regulating the
of any voter who is incapacitated by blindness or other
cause from voting in the prescribed manner; or if the
aken on a Saturday, of any voter being a Jew, or of any
voter.
eturning officer is required, as soon as possible, to give
otice of the result of the election, and of the total number
given for each candidate, whether elected or not, in the
contest.
V. c. 21, soldiers during a *parliamentary election* are no
quired to remove to the distance of two miles from the
polling, but must remain in their barracks or quarters.
for the withdrawal of the military never extended to
in garrison, or to soldiers entitled to vote at elections; nor
uards in Westminster and Southwark, or to any place of
idence.
rd of parliament, or lord lieutenant of a county, has a
interfere in the election of commoners.
s of the revenue, as well as justices and officers appointed
ie Metropolitan Police Acts, are expressly prohibited from
ng at elections of members of the House of Commons.
have been frequently determined to make an election void,
ne case of riots, the returning officer can adjourn the poll
xt day, and again then if necessary.

IV.—BRIBERY AND CORRUPTION AT ELECTIONS.

And by the Ballot Act, 1872, a person, for all purposes of the law relating to parliamentary and municipal elections, is to be deemed guilty of the offence of personation who at an election for a county or borough, or at a municipal election, applies for a ballot paper in the name of some other person, whether that name be that of a person living or dead or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper in his own name.

The offence of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, is a felony, and any person convicted thereof is liable to be punished by imprisonment for a term not exceeding two years, together with hard labour. It is the duty of the returning officer to institute a prosecution against any person whom he may believe to have been guilty of personation, or of aiding, abetting, counselling, or procuring the commission of the offence of personation by any person, at the election for which he is returning officer, and the costs and expenses of the prosecutor and the witnesses in such case together with compensation for their trouble and loss of time, are to be allowed by the court in the same manner in which courts are empowered to allow the same in cases of felony.

The offence of personation is a corrupt practice within the meaning of the Parliamentary Elections Act, 1868.

The Corrupt Practices Prevention Act, 1854 (17 & 18 V. c. 102) deals with bribery, treating, and undue influence. By s. 2, the following persons, in the words of the act, are deemed guilty of bribery:—

"1. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give, lend, or agree to give or lend, or shall offer, promise, or promise to procure or to endeavour to procure, any money, or valuable consideration to or for any voter or to or for any person on behalf of any voter, or to or for any other person, in order to induce any voter to vote, or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

"2. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, give or procure, or agree to give or procure, or offer, promise, or promise to procure or endeavour to procure, any office, place or employment to or for any voter or to or for any person on behalf of any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, or shall corruptly do any such act as aforesaid, on account of such voter having voted or refrained from voting at any election.

"3. Every person who shall, directly or indirectly, by himself or by any other person on his behalf, make any such gift, loan, offer, promise, procurement, or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour *to procure*, the return of any person to serve in parliament, or *vote of any voter* at any election.

'4. Every person who shall, upon or in consequence of any
gift, loan, offer, promise, procurement, or agreement, procure
gage, promise, or endeavour to procure, the return of any
to serve in parliament, or the vote of any voter at any elec-

5. Every person who shall advance or pay, or cause to be paid,
money to or for the use of any other person, with the intent
such money or any part thereof shall be expended in bribery
election, or who shall knowingly pay or cause to be paid any
to any person in discharge or repayment of any money
or in part expended in bribery at any election."
person so offending is guilty of a misdemeanor, punishable
e and imprisonment, and liable to forfeit £100 to any one
hall sue for the same, with full costs; but the above definition
bery is not to extend to legal expenses incurred in elections.
s. 4, *treating* is defined to be in every candidate who, by him-
r another, either before, during, or after an election, shall
r be accessory to giving, or pay in whole or part any expenses
ed for any meat, drink, or entertainment to any person, to
ice his vote. Penalty on candidate so treating, to any one
hall sue, £50 for every offence, and the vote influenced null
id. *Undue influence* is defined to be threats of any force,
e, or restraint; or intimidation by menace of injury, harm,
; or any abduction or fraudulent device, by which the exer-
f the electoral franchise is impeded or prevented. Penalty,
imprisonment, and the fine of £50 with costs to any one who
secute, s. 5.
would seem from Mr. Baron Martin in *Queen* v. *Charlesworth*,
iving money to *non-electors*, by which they may be induced
nd a nomination and hold up their hands for a candidate, is
y under the act, from its tendency to influence an election.
s. 6, the names of persons convicted of bribery, treating, or
dation, are to be struck out of the register of voters by the
g barrister, and inserted in a separate list. No cockade,
, or other distinction, to be given at elections, under a
y of £2; and all expenses for music or flags held illegal, s. 7.
candidate or his agent is allowed to provide conveyance for
ter, for the purpose of polling at an election, but not to pay
oney, or "give any valuable consideration to a voter for or in
t of his *travelling expenses* for such purpose."
urther effort was made in 1863 to avert corrupt practices at
ns, by 26 & 27 V. c. 29. By s. 2, except in respect of
al expenses, no payment or advance, loan, or deposit by a
ate is to be made otherwise than through *authorized agents*,
names and addresses have been declared in writing to the
ing officer on or before the day of nomination. Any such
nt or advance is a misdemeanor, or, in Scotland, punishable
and imprisonment. Names and addresses of agents to be

published by returning officer on or before day of election. All bills of charges or claims on candidate to be sent in to agent within one month from declaration of day of election, or right to recover barred, s. 3. A detailed statement of election expenses with bills and vouchers signed by agent, to be delivered to the returning officer within two months, and at the expense of the candidate an abstract of such statement to be published in local newspaper. Penalty for default by candidate or agents, £5 each day. Furnishing an untrue statement a misdemeanor. Bill and vouchers to be open to inspection of voters for six months after election on payment of 1*s*. Witness before an election committee or commission not excused answering question relative to corrupt practices on the ground that such answer may *criminate* himself but witness entitled to be protected by certificate from the clerk of the committee, or given under the hands of the commission, against any ulterior proceedings against him, s. 7.

An addition to the above offences in connection with elections has been made by the Representation of the People Act, 1867 by which it is declared to be bribery if any person shall either directly or indirectly corruptly pay any rate on behalf of a rate payer for the purpose of enabling him to be registered as a voter thereby to influence his vote at any future election, or for the purpose of inducing a voter to vote or refrain from voting.

Proceedings for questioning the election returns are regulated by the Parliamentary Elections Act, 1868 (31 & 32 V. c. 35), and are in substance as follows :—

Any person who voted, or who had a right to vote, or who claims to have had a right to be returned, or who alleges himself to have been a candidate at any election, may within 21 days after the return, or in case of any alleged corrupt payment, within 28 days after such payment, present to the court of Common Pleas a petition complaining of an undue return or election; such petition to be served on the candidate or candidates who have been returned. The petitioner to give security of £1,000 for the payment of costs, charges, and expenses. The trial of every such petition shall be conducted before a judge of one of her Majesty's superior courts of common law, to be selected from the rota for the trial of election petitions during the year, such rota to be formed by one judge of each of the courts of Queen's Bench Common Pleas, and Exchequer, the aggregate number of judges having been for this purpose increased by three. The trial shall be conducted in open court without a jury, and as a rule in the borough or county in which the election that has been impugned took place. Witnesses can be examined on oath, and the judge shall be able to determine (which determination is final) whether the return or the election is void, and if so, what other person, if *any*, was duly returned or elected; the same shall be certified to *the speaker in writing*. Where charge is made in the petition of

rrupt practices, the judge shall certify or report thereon as the casion may require, in which case the House of Commons may ake such order in respect of it as they shall think proper. On report by the judge that bribery has been committed, the guilty rty shall be incapable during the next seven years of being ected to parliament, or of being registered or of voting as a rliamentary voter at any election in the United Kingdom, or of lding certain offices, including any municipal or judicial office, of being appointed or acting as justice of the peace.

Where it has been represented to her Majesty by a joint address both houses of parliament that corrupt practices have extenvely prevailed in any place sending a member to parliament, her ajesty may appoint commissioners to make inquiry; and where ey have made an unfavourable report, the place in question has en disfranchised by act of parliament, either permanently or for time.

V.—MODE OF TRANSACTING BUSINESS IN PARLIAMENT.

The method of doing business is much the same in both houses. ch house has its speaker: the speaker of the lords is usually the rd chancellor; the speaker of the commons is chosen by the use, but must be approved by the Queen. The speaker of the mmons decides on questions of form or modes of procedure, but nnot give his opinion on any legislative subject before the house; e speaker of the lords, however, if a lord of parliament, may ve his opinion. In both houses a majority binds the whole, and is majority is given publicly and openly.

When an act of parliament of a private nature is wished for, empower individuals to undertake any work of public utility otice in the *Gazette* and other forms prescribed by the house aving first been complied with), a petition is presented by a ember, which is either referred to a committee to examine the atter, or, on the petition itself, if not opposed, leave is given to ing in a bill.

25 & 29 V. c. 27 (see *ante*, p. 4), awards costs in certain ses of *private bills*. By s. 1, when committee on a private ll decide that the preamble is not proved, or insert in such ll any provision for the protection of a petitioner, or strike t or alter any provision for his protection, and further unanisously report, with respect to a petitioner against the bill, hat such petitioner has been unreasonably or vexatiously subcted to expense in defending his rights proposed to be interfered ith by the bill, such petitioner shall be entitled to recover om the promoters of bill costs in relation thereto, or such ction thereof as the committee may think fit, such costs to be xed by the taxing officer of the house, or the committee may

award such a sum for costs as it shall think fit, with the parties affected. When committee report unanin tion unfounded, promoters to be entitled to recov vided always that no landowner who, *bonâ fide*, at risk and charge, opposes a bill which proposes to tion of the said petitioner's property for the purpos shall be liable to any costs in respect to his oppo bill. When committee report preamble not proved, pay costs out of deposits. By s. 9, when a bill is by a company already formed, all persons whose nar the bill as promoting the same, and in the event of ing, the company thereby incorporated, shall be promoters of such bill for all the purposes of the pression "private bill" to include any bill for a loca act. If the matter is of a public nature, the bill is a out a petition, on the motion of a member. The bill on paper, with a number of blanks and spaces for alterations. It is read a first time, and, some little second. After each reading, the speaker explains th the bill, and puts the question—*Whether it shall further?*

After a second reading it is *committed*, that is, committee, either private or of the whole house. A the whole house is composed of every member, and speaker quits the chair, and may give his opinion member; another member being appointed chairmar is taken by the chairman of ways and means. In t the bill is discussed clause by clause, amendments mac filled up, and sometimes the bill entirely new-mod the opinion of the house has been taken on each claus ment, the bill is ordered to be engrossed, that is, wr strong hand on a roll of parchment. This done, it i time, when, if a new clause be added. it is done separate piece of parchment to the bill, which is The speaker then again opens the contents, and holdin hand, puts the question—*Whether it shall pass?*

If agreed to, it is carried to the bar of the lords by of members for their concurrence, where it passes th forms, and, if agreed to by them, it waits the royal jected, no notice is taken, to prevent altercation. make any amendment to it, it is sent down again to for their concurrence. Should the commons object t ment, a conference is held between members dep house to adjust the difference. Where both parties rem the bill is dropped. A bill introduced, and rejecte introduced a second time during the same session Similiar forms are observed when a bill begins in Lords.

In 1858, by 21 & 22 V. c. 78, the committees of both houses are entitled to administer oaths to witnesses in certain cases, so that the evidence taken before a committee of either house on a private bill is available, if desired, before the other house to which the bill is referred. For this purpose, by ss. 1 and 2, the committees of the commons on private bills may examine witnesses on oath, and the lords also may examine witnesses on oath, in lieu of such witnesses being, as heretofore, sworn at the bar of the house.

In the commons the speaker has a casting vote in case of an equality of votes; but, in the lords, the speaker's vote is counted with the rest of the house; and in case of an equality of votes the *non-contents*, or negatives, are considered the majority.

As to the *origin of bills*: with the crown originates all bills of supply: with the lords, all bills relating to divorces, or restitution in blood or of honours; with the commons all bills relating to the public income and expenditure, and all other measures that can properly come within the class of money bills. Bills affecting the royal prerogatives are not usually introduced into either house without the previous consent of the crown. It is considered unconstitutional for one house to take the initiative in any matter affecting the privileges of the other. In general it is held that the lords should originate bills of pains and penalties, or other measures founded upon oral testimony.

In connection with courts of law, the houses of parliament can punish all contempt of their authority, or disobedience to their mandates. Each house is armed with power to repress any aggression upon their rights or any interference with their privileges; but the operation of this power is limited to the session or duration of parliament. Committals to prison by either being usually terminated by a prorogation or dissolution; but the lords may imprison beyond the end of the session (*May on Parl.* 71). Either house can delegate to a committee the power of sending for papers, and of enforcing the attendance of necessary witnesses.

Committees are, first, those of the whole house, which may be for the special consideration of certain resolutions concerning which a motion exists; or the house resolves itself into such committee to consider the details of a bill, the principle of which may be disputed at any or all of its other stages; or there may be committees for financial purposes, as those of supply, or ways and means. Secondly, there are select committees chosen by ballot or otherwise for some specific purpose—the numbers composing such bodies usually not exceed twenty or thirty members; occasionally these are appointed committees of secrecy.

Stat. 34 & 35 V. c. 83, enacts, that the House of Commons may administer an oath to the witnesses examined at the bar of the said house.

Any committee of the House of Commons may administer an oath to the witnesses examined before such committee.

Any person, examined as aforesaid, who wilfully gives false
dence, shall be liable to the penalties of perjury.

Where any witness to be examined under this act cons
tiously objects to take an oath, he may make his solemn
mation and declaration, which shall be of the same force and e
and shall entail the same consequences, as an oath taken ir
usual form.

When the whole house is in committee, the speaker vacate
chair, the mace is placed under the table, and some other me
is called on to preside, who sits in the seat of the senior c
For committees of supply of ways and means, there is a chai
who receives a salary.

A *conference* may be either for the communication of resolut
or it may be a species of negotiation between the two houses,
ducted by managers appointed on both sides, for the purpo
producing concurrence, in cases where mutual consent is neces
or for the purpose of reconciling differences which may have ar
If the conference be upon the subject of a bill depending bet
the two houses, it must be demanded by that house which, a
time of asking the conference, is in possession of the bill.
the sole privilege of the lords to name the time and place for
ing a conference, no matter by which house it may have bee
manded. Reasons in writing for the course resolved to be t
are usually furnished to the managers on both sides; in which
it is simply called "a conference." Should this proceeding fa
"free conference" must be held, which gives an opportunity
the managers individually, and unrestrained by any precise for
argument, to urge such reasons as in their judgment may best
to influence the house to which they are addressed. A free
ference is usually demanded after two conferences have been he
without effect. After one free conference none other but free
ferences can be held touching the same subject. At all confere
the managers on the part of the upper house are seated and wear
hats; those for the commons stand uncovered. The speaker c
the chair of the house during the absence of managers attendi
conference.

During the session the House of Commons mostly sits five
weekly for the despatch of business; the House of Lords nc
often. By the regulations of 1833 (since altered), the comr
agreed to meet every day except Saturday, at 12 o'clock, for pri
business and petitions, and to sit till three, unless the busi
should sooner be disposed of. At this early meeting tw
members instead of forty to form a house; and a quarter past
o'clock, instead of four, was fixed for the house assembling in
evening. It was also resolved that a select committee shoul
future be appointed at the commencement of each session to cla
all petitions presented to the house, and to order the printin
such of them at length, or in abstract, as appeared to them

require it. Measures were also adopted for obtaining and publishing authentic lists of divisions.

Discussions generally arise on a motion being made by a member, seconded by another, and then put from the chair in the shape of a question; on each of these every member is entitled to be heard once, but he may rise again to explain, and the member who originates the motion is entitled to a reply. In committee the restrictions on speaking are removed.

When a motion has been made upon which the house is unwilling to come to a vote, there are formal modes of avoiding a decision; among which are, "passing to the other orders," or moving the "previous question." The former means that the house should take no further notice of the matter then introduced, but, casting it aside, proceed to other business appointed for that day; the latter, that the vote be previously taken as to the expediency of their coming to any decision on the question raised. If the previous question be carried, the motion it is meant to frustrate is only got rid of for the time; whereas a direct negative to the motion would be a proscription of it for the remainder of the session, as well as a denial of its principle.

Moving that a bill "be read this day six months," that is, after a prorogation has intervened, by which every bill is dropped, is a mode of throwing out a distasteful measure without coming to an express declaration upon its principle.

Notice is sometimes given of a "call of the house;" this is meant to ensure a full attendance of members, as those absent without leave of the house, or just cause, are liable to be fined.

The rules of order in the House of Lords differ in some particulars from those observed in the Commons. In debate, those who speak address the whole house and not the chairman. The peer who sits on the woolsack or in the chair of committees has no duties to perform during the deliberations of the house, excepting to "put the question." He is not the judge or guardian of order. If several peers rise together, the house decides who shall first be heard. The speaker or deputy speaker of the lords is not disqualified *ex officio* from taking a part in the debate.

VI. ROYAL ASSENT.

The royal assent is given either in person or by commission. When a bill has received the royal assent in either of these ways, it becomes a statute, or act of parliament, and is enrolled in the Court of Chancery and printed by the Queen's printer for public distribution. The royal assent is given in the lords, the commons being present at the bar, to which they are summoned by the Black Rod. It seldom happens that the assent is given in person, unless it be at the close of the session, when the Queen usually attends to

prorogue parliament, and, seated on the throne, robed and c signifies her pleasure what bills shall become acts, thro clerk of parliament.

By legal fiction, all the acts passed in one session are h only so many chapters, that comprise one statute, and th session to only form one day; in consequence an act of pa was held to operate from the day on which parliament as at whatever period of the session it passed. But this is r by the 33 G. 3, c. 13, by which all acts are directed to cc from the date of the royal assent, unless some other expressly mentioned in the act.

An *adjournment* is the discontinuance of sitting from o another during the session.

Prorogation is an act of royal authority, and is a discon of parliament from session to session. After prorogation, begun, and not completed, must, if wished for, be resum in the next session; but, after adjournment, the busine house is taken up in the state in which it was left.

A *dissolution* is the ending or civil death of the parliam may happen in two ways:—1. By the will of the Queen, e either in person, by commission, or proclamation. 2. Pa may expire by length of duration. The utmost duratio same parliament, under 6 W. & M. c. 2, was *three* yea the expiration of which, reckoning from the return of summons, the parliament was to have no longer continuanc by 1 G. 1, st. 2, c. 38, this term has been extended to sev

CHAPTER VII.

Rights of the People.

THE people may be relatively considered that great portic community separate from its government; and having brie the origin and powers of the ruling authorities, we sl advert to those protective measures by which society is from the oppression and encroachments of the governing a

The chief securities by which the rights of the pe recognized are Magna Charta, the Coronation Oath, the P Right, the Habeas Corpus Act, the Bill of Rights, and t Settlement. With the exception of the last, the Bill of the most recent declaration in favour of public liberty; a prising, as it does, a distinct affirmation of all those which the people and their rulers had been formerly di may now be considered the great constitutional act by w *national* rights and immunities are prescribed and guarant

The Bill of Rights, or declaration delivered by the l

none to the Prince and Princess of Orange, February 13th,
), and afterwards enacted in parliament, and incorporated in
statute law of the realm, declares—
hat the pretended power of suspending laws, or the execution
aws, by regal authority, without the consent of parliament, is
al.
hat levying money for the use of the crown by pretence of pre-
ative, without grant of parliament, for longer time, or in other
ner, than the same is or shall be granted, is illegal.
hat it is the right of the subject to petition the Queen, and all
mitments and prosecutions for such petitioning are illegal.
hat the raising or keeping a standing army within the kingdom
time of peace, without the consent of parliament, is against
.
hat subjects who are Protestants may have arms for their defence
itable to their condition, and as allowed by law.
hat elections of members of parliament ought to be free.
hat the freedom of speech and debate, and proceedings in par-
ment, ought not to be impeached or questioned in any court or
ce out of parliament.
hat excessive bail ought not to be required, nor excessive fines
posed, nor cruel and unusual punishments inflicted.
hat jurors ought to be duly empannelled and returned, and
rors who sit upon men accused of high treason ought to be free-
lders.
hat all grants and promises of fines and forfeitures of particular
sons before conviction are illegal and void.
And for redress of grievances and amendment of the laws, par-
ments ought to be held frequently.

These claims set forth in this declaration are affirmed to be the
ncient undoubted rights and liberties of the people, and are again asserted
by the Act of Settlement, which limited the crown to the present
royal family. Some new provisions were also added, for better
securing our rights and immunities, which the statute declares to be "the birthright of the people of England," according to the
ancient doctrine of the common law.

The guarantee of civil liberties next in importance is the *Habeas Corpus Act*, the 16 C. 2, c. 10, amended by 31 C. 2, c. 2. By this act, if any person be imprisoned by the order of any court, or the Queen herself, he may have a writ of habeas corpus to bring him before the court of Queen's Bench, or the Common Pleas, who shall determine whether the cause of his committal be just. As the act extends only to committals in criminal cases, the 53 Geo. 3, c. 100, has extended the remedies it gives to miscellaneous causes of imprisonment other than criminal offences, and the power of issuing the writ to all the judges. But by 25 & 26 V. c. 20, no writ of habeas corpus can issue out of England from any judge or court of justice into any colony or foreign dominion of the crown,

where the Queen has a lawful court empowered to issu and ensure its execution.

In times of great political excitement and suspected conspiracies, the operation of the Habeas Corpus Ac suspended, as in Ireland in 1866, by 29 V. c. 1. But s sion does not enable any one to imprison without ca pretext for so doing; it only prevents persons who are from being bailed, tried, or discharged, during the leaving to the committing magistrate all the responsibilit on illegal imprisonment. It is not uncommon, theref an act of indemnity subsequently, for the protection o either could not defend themselves in an action of fals ment without making improper disclosures of the info which they acted, or who have done acts not strictly at law, though apparently justified by the necessity of t

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PART II.

ADMINISTRATION OF JUSTICE.

WHEN a person has sustained an injury, the first c naturally is the mode whereby that injury can be legall It will be proper, therefore, before we enter on the wror individuals are liable, shortly to advert to the tribunal dies provided by the laws of England for the admin civil and criminal justice. This division of the sub included under the following heads:—

1. Courts of Law.
2. Procedure in the Courts of Common Law.
3. Procedure in the Courts of Equity.
4. Criminal Procedure. Summary Convictions.
5. Constitution of Juries.
6. Evidence.
7. Judicature Act, 1873.

CHAPTER I.

Courts of Law.

COURTS are places where justice is judicially administ *in civil cases*, between party and party, or, in crimi

vereign and the people. Some of them are superior, urts of Westminster, and have a general jurisdiction er other courts. Others are inferior, their jurisdic- nd subordinate to superior courts. Some of them *ecord*, others *not of record*, and this forms the chief n.

record is that where the proceedings are enrolled and which has power to hold pleas, according to the common law, in all actions to the amount of ls; such are the court of Queen's Bench, the Com- county courts, and the courts of borough recorders.

of record is that where proceedings are not enrolled, no general authority to fine or imprison; such are n. These courts can hold no plea of matters cog- common law, unless under the value of 40*s.*, nor of ury whatever, not having any process to arrest the efendant.

court of judicature in the kingdom is the *House of* ; no original jurisdiction over causes, or contested own members, but only upon appeals, to rectify any stake in the courts below, and is, in all suits, the m whose decision no further appeal to any other nitted.

House of Lords is the *Court of Chancery*, which is , institution. Its jurisdiction is either *ordinary* or : in the first, its mode of proceeding is conformable law; in the last, it exercises jurisdiction in cases of r to abate the rigour of the common law, and afford ievances in which the ordinary law courts are in- ien a plaintiff can have his remedy at common law, hancery will not interfere; neither will it entertain mount under 10*l.*, except in cases of charity; nor ls under 40*s.* per annum; nor will it relieve persons the matter of them tends to overthrow any funda- f the common or statute law.

ncellor is the highest judicial officer in the kingdom. , the appointment of all justices of the peace. He is lor by his office, and speaker of the House of Lords . He is keeper of the queen's conscience; visitor, queen, of all royal hospitals, colleges, and founda- ron of all the queen's livings of the value of £20 or um, in the queen's book. He is the guardian of natics, and has the general superintendence of s in the kingdom, assisted by the commissioners ritable Trusts Act.

nturies, the chancellors, like most state functionaries, ics, and an office so confidential and near the royal ot fail to grow in importance; so that the king's

clerk, like the clerk of humbler personages, gradually enlarge powers, and from the chief scribe and reader became confide adviser and keeper of the conscience of his sovereign. merely affixing the king's seal to judicial writs or mandate became himself a potent judge, sitting in the *Aulia Regis* chief legal director; or in the marble chair of Westminster with a great marble table before him, covered with the writs charters waiting to be sealed in his presence with the great s England.

Assistant to and subordinate to the lord chancellor, ar master of the rolls and the three vice-chancellors. Each of judges presides over a separate tribunal, and any causes or m may be brought before them, except such as relate to lun which are always heard by the chancellor. A vice-chancel bound to hear all those matters which the chancellor may d in addition to those originally set down for hearing in his court; the master of the rolls is not so bound; and his decr orders in cases decided before him can only be reversed or al by the chancellor, upon petition or appeal.

In like manner the proceedings of a vice-chancellor may b versed, discharged, or altered, and cannot be enrolled until s by the chancellor or lords justices; no vice-chancellor, how can discharge or alter an act or order of any other vice-chanc except of his own predecessor in office, or of the lord chanc or master of the rolls, unless authorized by them.

By 5 V. c. 5, the lord chancellor may direct a vice-chancel sit for him, and at other times in a separate court, whethe other courts of Chancery are sitting or not; every vice-chanc if a member of the privy council, is a member of the judicial mittee: he takes precedence next after the lord chief baron is empowered to appoint his secretary, usher, and train-b His tenure of office is during good behaviour.

By 13 & 14 V. c. 35, power is given to persons interest questions cognizable in the court of Chancery, to state special for the opinion of the court, by which the delay and expe proceedings may be diminished. Special cases are to be sign counsel, filed, and appearances entered by defendants. hearing, court may determine question, and make declarati the case may be sent to a common law court.

In 1851, under 14 & 15 V. c. 83, a court of appeal in Ch was established, to consist of the lord chancellor and two justices, barristers-at-law of fifteen years standing, appoint the crown. The lords justices to have precedence next t chief baron of the court of Exchequer, and between them according to seniority of appointment. All the jurisdi powers, and duties exercised by the court of Chancery, a statutory jurisdiction vested in the chancellor, may be exerci *the court of* appeal; saving certain ministerial powers c

pertaining to the custody of lunatics, visitation of
or revocation of letters patent.
further despatch of business in this court, the 30 & 31
rovides that the jurisdiction and powers of the court
: 15 V. c 83, may be exercised either by both of the
ointed under the said act when sitting together. or by
the judges when sitting separately, or by the lord
when sitting with the said judges or either of them;
at no decree made on the hearing of the cause, or on
sideration, shall be re-heard before the said judges
g separately; provided also, that the lord chancellor
the same powers while sitting alone as prior to the
. Lord chancellor to fix the times of sittings.
t of *Queen's Bench* is the supreme court of the common
kingdom, consisting of a chief justice and four *puisne*
ho are, by their offices, the great conservators of the
ead coroners of the land.
sdiction of this court is very high, and claims prece-
e court of Chancery. It keeps all inferior jurisdictions
bounds of their authority, and may either remove their
s to be determined here, or prohibit their progress
controls all civil corporations in the kingdom. It
magistrates and others to do what their duty requires,
ere there is no other specific remedy. It protects the
the subject, by summary and speedy interposition. It
izance of both criminal and civil causes; the former
called the crown side, the latter on the plea side of the

en's Bench is likewise a court of appeal, in which may
d determinations of the court of Common Pleas, and
of inferior courts of record in England. Indictments
ito this court may be tried either *at bar*, that is, at the
court, while sitting in term time, or at *nisi prius*, by a
e county out of which the indictment is brought, the
lf being the principal court of criminal jurisdiction in
om. An appeal, however, may be had even from this
for, if a suitor be not satisfied with a decision here, he
al to the House of Lords, or the court of Exchequer
according to the nature of the suit and the manner in
as been prosecuted. Indictments moved into the Queen's
e court may order to be tried at the Central Criminal
offences committed out of the jurisdiction of that court
dered to be tried there under 19 & 20 V. c. 16.
risdiction of the court of *Common Pleas*, like that of the
arts of Westminster, is general, and extends throughout
l; but it has no cognizance of crimes or matters of a public
The judges of the court *are five in number, one chief*
f petty judges, *created by the queen's letters patent*, who

sit every day in the four terms, to hear and determine all matters of law arising in civil causes, whether in real, personal, or mixed actions. These it takes cognizance of, as well originally as upon removal from the inferior courts.

Another superior court is the *Court of Exchequer*. It is held before the chancellor of the exchequer, the chief baron, and four puisne barons. The chief business of the court was formerly to take cognizance of matters connected with the public revenue, though, by a fiction of law, common to this court, as well as to that of the Queen's Bench, all personal suits may be prosecuted in the court of Exchequer. By 5 V. c. 5, the jurisdiction of this court as a court of equity is abolished, and transferred to the court of Chancery, but the Exchequer retains all its powers, other than those it exercised up to 1841 as a court of equity. By 15 & 19 V. c. 90, the barons, in order to correct the delays of the procedure in the court of Exchequer, are empowered to frame rules and orders for regulating pleadings and practice, so as to assimilate proceedings in crown suits to those between subjects.

The court of *Exchequer Chamber* is held for revising the judgments of the three superior courts of law, and is holden before the judges of the two other courts not concerned in the judgment impeached. In this court, such causes as appear to the judges, upon argument, weighty and difficult, are discussed, before any judgment is given upon them in the courts below.

Another court of error or appeal is the *Judicial Committee* of the Privy Council, consisting of the lord chancellor, lord justices, lord chief justices, judges, vice-chancellors, master of the rolls, judges of the admiralty, bankruptcy, and prerogative courts, with the bishops for ecclesiastical purposes, and such two other members of the council as the queen may summon. Appeal to this court may be made from the admiralty and ecclesiastical courts, and from the British colonies and dominions abroad. Four members constitute a quorum. It has also cognizance of patents for inventions, and power to enlarge the term of duration of patents, as extended by 7 & 8 V. c. 69.

In consequence of the members of the Judicial Committee having other duties to perform, the Judicial Committee Act, 1871 (34 & 35 V. c. 91), was passed, which empowers her Majesty to appoint, as paid members of the Judicial Committee of the Privy Council, four persons specially qualified as follows: that is to say, present or former judges of one of her Majesty's superior courts at Westminster, or a chief justice of the High Court of Judicature at Fort William in Bengal, or Madras, or Bombay, or of the late Supreme Court of Judicature at Fort William in Bengal. Salaries £5,000 each.

The courts of *Assize* and *Nisi Prius* are composed of two or *more* judges, who are twice every year sent round the kingdom to *try, by juries of the* respective counties, the truth of such matters

of fact as are brought before them. Their commission extends to every description of offence, civil or criminal. They usually make their circuits in the respective vacations after Hilary and Trinity terms; and for the better despatch of assize business, it is provided by 26 & 27 V. c. 122, that an order of privy council may alter the local arrangement of counties or parts thereof.

In London and Middlesex, the courts of *Nisi Prius*, or sittings after term, are held in or after term, before the chief or other judges of the superior courts.

The *Central Criminal Court* of the Old Bailey is for the trial of offences committed in the metropolis, and certain parts adjacent, in the counties of Essex, Kent, and Surrey, including places within a circuit of ten miles round St. Paul's Cathedral. The sessions to be holden *twelve times* a year at the least, and oftener if need be, in the city of London or the suburbs. All treasons, felonies, misdemeanors, and offences on the high seas may be tried at this court. By 7 & 8 V. c. 71, for the trial of offences in Middlesex, two sessions of the peace are to be holden every calendar month. An assistant judge, with a deputy, are created, and the Westminster sessions discontinued.

The court of *General Quarter Sessions* is held by two or more justices of peace in every county and division of county, once every quarter of a year, for the trial of misdemeanors and other matters touching the breach of the peace. Under the 1 W. 4, c. 70, these sessions in the several counties, ridings, and divisions are required to be held in the first week after the 11th of October, in the first week after the 28th of December, in the first week after the 31st of March, and in the first week after the 24th of June. But by 4 & 5 W. 4, c. 47, the justices may direct the April quarter sessions to be held any time between March 7th and April 22nd, so as not to interfere with the spring assizes. By 21 & 22 V. c. 73, s. 12, the sentences of any court of general or quarter sessions take effect from the time of being pronounced, unless the court otherwise direct. By 22 & 23 V. c. 4, s. 41, the general sessions of the peace for Middlesex are to have the powers of quarter sessions. Court may remit fines on jurors imposed at a previous session.

The old *County Courts*, kept by the sheriffs before the superior courts of Westminster were erected, were the chief courts in the kingdom. Their powers were greatly reduced by the statute of *Magna Charta*; and their ordinary jurisdiction limited to the determination of trespasses and debts under 40*s*. They could not personally arrest the person; and, though they might attach the goods, they had no power to sell them in satisfaction of a debt, if the demand exceeded 40*s*. Specialty debts were not recoverable there, and the cause of action must arise and *the defendant reside* within the county. The *dilatory and expensive proceeding* of these courts, and *various local courts for the recovery of small* debts,

led to the establishment, in 1846, of the present County C with more efficient and definite powers. For the jurisdic these in 1865, and the extension of their powers in equi *Debtors and Creditors*, Pt. IV. chap. 14.

The *Court Leet* is a court incident to a hundred, ordai punishing encroachments, nuisances, fraudulent weights offences against the crown. The steward is the judge; and one, from the age of twelve to sixty years, that dwells witl leet, is obliged to do suit within this court, except peers, men, &c. The lord of the leet was formerly required to pillory and tumbril to punish offenders; or, for want ther might be fined, or the liberty seized: all towns within t were to have stocks in repair; and the town that had none forfeit £5.

The *Court Baron* is that court which every lord of a ma within his own precinct, and is an inseparable adjunct to a It must be held by prescription, for it cannot be created day, and is to be kept on some part of the manor. The c for passing estates and surrenders, and for receiving h duties, heriots, and customs.

The court of *Pie Poudre* is a court of record incident t fair and market, of which the owner of the toll of the ma judge; and its jurisdiction extends to administer justice trading injuries done in the fair and market. An appeal the courts at Westminster.

II. ECCLESIASTICAL, MARITIME, AND LOCAL COURTS.

There are various other courts for the administration of such as the courts of probate, divorce, bankruptcy and insol the court of corporate towns and police courts exercise su jurisdiction over light offences. There are also courts whi cognizance of injuries, chiefly of an ecclesiastical, military, t and maritime nature.

The principal ecclesiastical court of the province of Can is the court of Arches; the thirteen parishes, which are p of the archbishop, are under the jurisdiction of the judge court. The *Court of Peculiars* is a branch of the court of . and has jurisdiction over the parishes of the province of bury in other dioceses. The courts of peculiars are numero those, with the diocesan courts and the courts of the pro York, form the ecclesiastical administration of the kingdom by the great change of 1857, the testamentary and matr jurisdiction of the ecclesiastical courts has been transferre courts of Probate and Divorce; nor, by 23 & 24 V. c. 32, suit be made in them against any person not in holy or *defamation* and brawling.

The only maritime court is the court of Admiralty, held before the Lord High Admiral or his deputy, and which proceeds according to the rules of the civil law. But by 7 & 8 V. c. 2, maritime offences are now tried by the courts of Assizes or at the Central Criminal Court. The High Court of Admiralty is made a court of record by 24 V. c. 10, and its jurisdiction extended, as to claims, damage of cargo, and salvage. There is an appeal from the decisions of the court of Admiralty to the Privy Council.

Besides the courts mentioned, there are courts with a special jurisdiction: as the court of *Commissioners of Sewers*, whose business is to overlook the repair of sea-banks, the cleansing of public streams, ditches, and conduits. They are appointed by commission under the great seal, and their authority is limited to such county or district as the commission expresses.

The *Lord Mayor's Court*, for actions of debt, appeals, and apprenticeships, within the city of London, is held by the Recorder in Guildhall, or, in the Recorder's absence, by the Common Serjeant.

By 30 & 31 V. c. 142, s. 35, the *City of London Court*, formerly called the Sheriffs' Court, is included in the County Courts, and is now similar to them.

The jurisdiction of the Lord Mayor's Court is now extended. Appeals are allowed to its jurisdiction where the debt is less than £20.

III. THE COURT OF PROBATE AND WILLS.

By an act of 1857, the 20 & 21 V. c. 77, amended by the 21 & 22 V. c. 95, all powers exercised by the ecclesiastical courts in the granting of probates of wills and letters of administration are abolished, and transferred to a new court, called the court of Probate. The crown to appoint a judge of the court, being an advocate of ten years', or a barrister of fifteen years' standing; and the tenure of office to be the same as the judges of the superior courts, with like rank and precedence as the puisne judges. Court of Probate to sit and have its principal registry in London (Middlesex); and the district registries to be established in the cities and towns specified in the act. Registrar of the court, and the district registrars, to be advocates, barristers, solicitors, or attorneys, unless already practitioners in an ecclesiastical court. Registrars, officers, and clerks to execute their offices in person, not by deputy; nor must they practise, or participate in the fees of any person practising, s. 22.

In testamentary matters, court may examine witnesses on oath or affirmation, receive affidavits, and require production of any deed or writing: party disobeying liable to a fine not exceeding £20. Orders may be enforced with like power for the punish-

ment of contempt as exercised by the court of Chancery. Registrars may administer oaths. Forging the seal of the court to an affidavit or document, or the signature of a registrar, or of a commissioner for taking oaths, a felony, liable to penal servitude for life, or shorter term, s. 28.

Rules and orders to be made by the lord chancellor and judges to determine the practice and procedure of the court. Witnesses and, if necessary, parties to be examined orally, by or before the judge in open court, or parties may verify in whole or part by affidavit; witnesses subject to cross-examination; witnesses may be examined abroad. Rules of evidence in the common law courts to be observed: common law judges, upon request of probate judge, may sit in court of probate. Court may cause questions of fact to be tried by a jury before itself, or direct an issue to a superior court of law, in either case, at the instance of the heir-at-law; or in any case with mutual concurrence of parties. Power of the court, duties and liabilities of jurors, and right of challenging in suitors, same as in ordinary jury trials. Any person considering himself aggrieved by any decree of the court of Probate may, with leave of the court, appeal to the House of Lords, ss. 31, 39.

By s. 40, advocates, barristers, and serjeants-at-law, to have rank and precedence as before in the Judicial Committee of Privy Council. Persons who have been admitted advocates may practise in any court of common law or equity. Registrars and proctors may practise as solicitors in court of Chancery. By s. 45, all solicitors and attorneys may practise in court of Probate, subject to the laws in force concerning them.

District Registries.—By s. 46, probate of a will or letters of administration may be applied for to the district registry, and granted in common form, for control of personal estate, by the registrar, if, upon affidavit of one or more of the applicants, it appear the testator or intestate had at the time of death a fixed place of abode within the district. Such grant final, and not void from the deceased not having a fixed abode in the district. District registrar not empowered to grant probate or administration when there is contention, till after contention is terminated by a decree. District registrars to transmit notice by next post to the principal registrar of application for probate or administration, with name of testator or intestate, time of death, and place of abode and name of applicant, with any other particulars directed by rules and orders. Probate or administration not to be granted till after receiving a certificate from the principal registry. In case of doubt as to grant, district registrar to take the direction of the judge of the court, s. 50. Lists of probate and of administration, and copies of wills, to be transmitted to the principal registry. District registrar to file and preserve all original wills of which *probate or administration* has been granted, in the public registry.

of the district. Caveats against the grant of probate or administration may be lodged in the principal registry or the district registry, s. 53.

County Court Jurisdiction.—Section 54 is repealed, and 22 V. c. 35, s. 10, enacts that where it appears by affidavit to the registrar of the principal registry, that the personal property of the deceased was, exclusive of debts due, under the value of £200, and that the real estate to which deceased was beneficially entitled was under the value of £300, the county court of the place in which the deceased died shall have the jurisdiction of the court of Probate in respect to the grant and revocation of probate or administration in case of any contention in relation thereto. By 20 & 21 V. c. 77, s. 55, decree of judge of county court to be transmitted to district registrar, and on compliance probate or administration to issue from the district registry. Judge of county court to have the same power to decide testamentary causes and enforce judgments as in an ordinary action, and the affidavit of fact giving the court jurisdiction to be conclusive and not impeached, unless the facts be disproved pending the cause. Appeal allowed to the court of Probate upon any point of law, or the admission or rejection of evidence, and such appeal to be final. Not obligatory to apply to district registry or county court, but party may apply to the principal registry of the court of Probate, but on case shown as respects property or abode of deceased, Probate court may send the cause to the county court, and the court proceed as if applied to in the first instance. Rules to be framed to regulate proceedings of county courts in testamentary causes, s. 60.

By s. 61, where proceedings are taken for proving a will affecting real estate in solemn form, or for revoking probate, or any other matter in which the validity of the will is disputed, the heir, and persons interested, or pretending an interest, in the estate, are to be cited, and may be admitted parties in the contention. When the will is proved, or its validity otherwise decided on, the decree of the court to be binding on the persons interested in the real estate. Heir or other persons interested need not be cited unless shown to the court that deceased had a beneficial interest in real estate, or if shown the will does not affect the real estate. If not cited, heirs or others interested not affected by probate, decree, or order of the court. Probate or office copy to be evidence of the will in suits concerning the real estate. If validity of will be disputed, ten days' notice before trial to be given to opposing party, and within four days such party to give notice that the validity is disputed. In case of dispute court or judge to decide which party is liable to costs.

Deposit of Wills, Copies, Fees.—By s. 66, one place of deposit in London or Middlesex for all the original wills brought into court, or of which probate or administration has been granted, and of copies of all wills the originals of which are preserved in the dis-

trict registries. Judge to cause calendars to be ma
time of probates and administrations in the princi
in the district registries, and such calendars to be

IV.—COURT OF DIVORCE.

In 1857, by 20 & 21 V. c. 85, subsequently amen
V. c. 108, 22 & 23 V. c. 61, 23 & 24 V. c. 144
was at first of limited duration, but has now by 25
been made perpetual), and 31 & 32 V. c. 77, a
created with jurisdiction superseding that of th
courts..

This court is entitled the "Court for Divorce
nial Causes," and is to be held (when full) b
chancellor, the judges of the superior courts at W
the judge of the Probate court, who is judge in ord
exercise the whole authority of the court, and alo
or more of the judges of the Divorce court, determ
arising, except petitions for dissolving marriage,
new trials of issue before a jury, bills of exceptio
cases. Petitions for a dissolution of marriage and
new trials must be determined by three or more o
whom the judge of Probate court is one. In the
judge ordinary, the lord chancellor to appoint tempo
Advocates and proctors of the ecclesiastical courts,
solicitors, and attorneys of the superior courts, ent
with the same precedence as they have in the Judi
of Privy Council. The judge ordinary may direct
be heard by a full court, and he may also elect to s
if more advantageous to suitors, and he may ex
power and jurisdiction as in open court.

Either party to a suit, if dissatisfied with the
judge sitting alone, may, within fourteen days after,
court. Sittings of the full court are hold n duri
and five following days of sitting in each term, an
days as the judges think proper.

Either party dissatisfied with the decision of a f
petition for the dissolution or nullity of marriage n
calendar month, appeal to the House of Lords, i
not sitting, within fourteen days after its meeting.
appeal, the lords may either dismiss it, or reverse
remit the case to the court, to be dealt with as the

Before this court was established, the wife had nc
of adultery by the husband unless accompanied
circumstances, but now the wife is placed on nearly
ing of legal equality as the husband; but adultery o
husband is not (unless accompanied by some other

st, cruelty, or desertion) sufficient to enable the wife to
orce.

rity in respect of suits for divorce, separation, nullity
, restitution of conjugal rights, and other matrimonial
cept marriage licences, are vested in this court. A sen-
Judicial Separation" has the effect of a divorce *à mensâ*
d may be obtained either by the husband or wife, on
of adultery, cruelty, or desertion without cause for two
pwards. Upon any one of these grounds, application
le for restitution of conjugal rights or judicial separa-
ition to the court, and the court, being satisfied of the
e allegations of the petition, and no legal ground exist-
e same should not be granted, may decree a restitution
rights, or a judicial separation; and, if the application
ife, may make any order for alimony which shall be
t. A wife deserted by her husband may, at any time
ion, if resident within the metropolitan district, apply
magistrate, or, if resident in the country, to justices in
ns, or, in either case, to the court, for an order to pro-
oney or property she may procure by her own lawful
nd property of which she may become possessed after
ion, against her husband, or his creditors, or any person
nder him. The magistrate, justices, or court, if
the fact of such desertion, and that it was without
cause, and that the wife is maintaining herself by her
ry or property, may give to the wife an order protecting
gs and property acquired from the commencement of
tion, from her husband, and all creditors or persons
der the husband, and such earnings shall belong to the
he were an unmarried woman.

tecting order, if made by a police justice or justices of
ist be entered within ten days with the registrar of the
rt in whose jurisdiction the wife is resident; and the
reditor, or person claiming under him, may apply to the
e magistrate, or justices, for the discharge of the order.
band, creditor, or person claiming, seize or continue to
roperty of the wife after notice of protecting order, he
be sued by the wife to restore the specific property, and
double its value. During the continuance of the pro-
er, the wife is deemed to have been, while deserted, in
, with regard to property and contracts, suing and being
e would be under the act if she had obtained a decree of
aration.

ife deserted by her husband resident anywhere in
ay apply to the judge ordinary for an order to protect
rty acquired by her after separation as executrix or
Order of protection is valid in respect of any person or
who shall deal with the wife. Order obtained by wife

for protection of earnings or property is to state ti
tion commenced.

Except in proceedings to dissolve a marriage, th
on the principles and rules of the ecclesiastical
to the provisions of the acts and rules. A decre
obtained during the absence of husband or wife m
on the ground that there was reasonable cause for
such reversal is not to prejudice the rights of thir
spect of the debts or contracts of the wife betw
separation and reversal. Where alimony has bee
court may direct payment of it either to the wife
In case of judicial separation the wife is to be consid
with respect to all property she may acquire;
intestate the same must go as if the husband wa
wife again cohabit with her husband, all the prope
entitled to at the time of cohabitation is to be held
use, subject, however, to any agreement in writing
herself and husband whilst separate. If the alimo
the husband during judicial separation, is not dul
he is liable for necessaries supplied for her use.
prevent, during separation, the wife joining the h
exercise of any joint power given to them.

Any husband may present a petition to the court
his marriage may be dissolved on the ground that
the celebration of it, has been guilty of adultery, o
present a petition to the court, praying that her m
dissolved on the ground that, since the celebration
band has been guilty of incestuous adultery, or o
adultery, or of sodomy, bestiality, or of adultery cou
cruelty as, without adultery, would have entitled h
à mensâ et thoro, or of adultery coupled with des
reasonable excuse, for two years and upwards.
either by husband or wife, must state as distinctly
of the case permits, the facts upon which the clai
marriage dissolved is founded. Incestuous adulte
plains to mean adultery committed by the husband
with whom, if the wife were dead, he could not la
marriage, by reason of her being within the prohib
consanguinity or affinity; and bigamy is taken to
riage of any person being married to another du
the former husband or wife, whether the second
have taken place within the dominions of her M
where.

Upon the petition of the husband, the adulterer i
co-respondent to the petition, unless on special
allowed by the court; and on the petition of the wi
think fit, the person with whom the husband is a
committed adultery is to be a co-respondent. T

ber of them, may insist on having the contested facts
r. Upon the petition the court to be satisfied, so far
not only as to the facts alleged, but also whether or
ner has been in any manner accessory to or conniving
r, or has condoned the same; it shall further inquire
er charges which may be made against the petitioner.
se cases the petition will be dismissed, or if pre-
ecuted in collusion with either of the respondents.
e court is to pronounce a decree nisi for dissolving
such decree not to be made absolute till after the
not less than three months, during which any person
show cause why the decree should not be made ab-
n of collusion; but the court is not bound to decree
f it find the petitioner has during marriage been
tery, or of unreasonable delay in presenting or
e petition, or of cruelty towards the other party
e, or of having deserted or wilfully separated from
y prior to the adultery complained of, and without
use, or of such wilful neglect and misconduct as con-
adultery. On the decree, the court to order the
cure to the wife either a gross sum of money or
it during her life, proportioned to her fortune, if
usband's ability, a conveyancing counsel of the court
leed.

l, either in a petition for a dissolution of marriage
or in a petition *limited to the latter object only*, may
from any person, on the ground of his having com-
y with his wife, and such petition be served on the
er and the wife, unless the court dissent from such
ct the substitution of some other service. Claims
y the petition to be heard and tried on the same
manner as actions for criminal conversation used to
rts of common law. Damages to be recovered to
by the verdict of a jury, though either or neither of
s may appear. After verdict the court is to direct
er damages shall be paid or applied, whether the
hall be settled for the benefit of the children, if any,
ge, or as a provision for the maintenance of the

ıy petition by a husband the alleged adulterer is
ondent, and the adultery established, the court is to
erer to pay the whole or any part of the costs of the

edings for obtaining a judicial separation or decree
arriage, and on any petition for dissolving a mar-
, before making its final decree, may make interim
pect to the custody, maintenance, and education of
ne marriage of whose parents is the subject of the

proceeding, and may direct the children to be placed under the protection of the court of Chancery.

In questions of fact, the court may direct the truth to be determined before itself, or before any one or more of the judges of the court, by the verdict of a special or common jury. Jury is to be summoned as in the common law courts; jurors are to have same qualifications, same duties and liabilities, as in the superior common law courts, with like right of challenge in suitors. Questions to be tried by the jury are to be reduced to writing. Judge is to have same powers as at *nisi prius*. Bill of exceptions, special verdict, and special case allowed. Court may direct issues to be tried in any court of common law, either before a judge of assize in any county, or at the sittings in London or Middlesex, and either by a common or special jury, in like manner as is now done by court of Chancery.

An affidavit is to be filed in support of any petition for decree for nullity of marriage, judicial separation, dissolution of marriage, or in suit of jactitation of marriage. Affidavit also is to state that there is not any collusion or connivance between the deponent and the other party to the marriage.

On the hearing of any petition, the court may order the attendance of the petitioner, or examine him or her, or cross-examine, on oath; but the petitioner is not bound to answer any question tending to show that he or she has been guilty of adultery; but the husband and wife respectively are competent and compellable to give evidence relating to cruelty or desertion to or of the wife by the husband on a petition by the wife for dissolution of marriage. (*See post*, chapter VI., part II., Evidence.)

When the time limited for appeals has expired, and no appeal has been presented, or when any appeal has been dismissed, or when in the result of any appeal the marriage is declared to be dissolved, then, "but not sooner," the respective parties may marry again, as if the prior marriage had been dissolved *by death*. But no person in holy orders of the United Church of England and Ireland can be compelled to marry any person whose former marriage has been dissolved on the ground of his or her adultery; nor is he liable to any suit or censure for such refusal. If, however, any minister of the church refuse to solemnize such marriage, any other minister of the church in holy orders entitled to officiate within the diocese in which the church or chapel of the refusing minister is situate, may perform therein the marriage service.

On a sentence of divorce or judicial separation for adultery the wife, if it appear the wife is entitled to any property in possession or reversion, the court may order a settlement of such property for the benefit of the innocent party and the children of the marriage, or either or any of them.

The court may also make orders as to custody of children after final decree of separation. After a final decree of nullity or dis-

marriage, the court may inquire into the existence of
l or post-nuptial settlements, made on the parties whose
the subject of the decree, and may make orders with
the application of the property settled either for the
hildren or the respective parents.
ases to the proceedings in this court are examined
en court, but the cases of the respective parties can be
affidavit, and the persons making any affidavit can be
ed in open court by the opposite party. The rules of
served at Westminster are observed, and the court may
ssions to examine witnesses abroad or unable to attend.
a which divorce could, before 1857, be obtained is

e alleged adulterer is co-respondent, the court may
after close of evidence on the part of the petitioner, to
from the suit.
rial here to state that persons may apply to this court
ation of their legitimacy or of the validity of the mar-
eir fathers and mothers or grandfathers and grand-
for a declaration of their own right to be deemed natural
s.

CHAPTER II.

cedure in the Courts of Common Law.

jurisdiction of one of the courts mentioned in the last
ost every description of wrong may be brought; and
nd locality of the injury determine the process an in-
ht to adopt, and the tribunal to which he ought to apply,
as of his grievance.
are of two kinds, *civil* and *criminal;* the former are
wrongs as principally affect the interests of individuals;
e those greater delinquencies which endanger the peace
ng of society, and are denominated crimes and mis-

remedy for a civil or private injury is by *action;* in
dividual seeks compensation for some injustice he has
his reputation, person, or property. Action *on the case*
action, where a party seeks compensation in damages
r done without violence, and for which the law has not
specific remedy. Action *upon a statute* is where an
arty sues upon a statute, and seeks redress either by
words of the statute or by implication. If a statute
ly for a matter actionable at the common law, the party
he common law as well as upon the statute. But if a
is action at the common law, he waives his remedy by
Action *qui tam,* or *popular* action, is such as is given

by acts of parliament, which create a forfeiture, and impo penalty for the neglect of some duty, or the commission of offence, to be recovered by him who prosecutes.

As some legal proceedings are such that they cannot be ta acted except during term, it is necessary to state here that t are four in number, Hilary, Easter, Trinity, and Michael Easter and Trinity terms used to be movable, being regulate the festival of Easter; but by 11 G. 4, and 1 W. 4, c. 70 period for the commencement and duration of each term is defin fixed. According to this act, Hilary term begins on the 11th ends on the 31st of January; Easter term begins on the 15th of and ends on the 8th of May; Trinity begins on the 22nd of and ends on the 12th of June; and Michaelmas term begins o 2nd and ends on the 25th of November. With respect t *General Return Days*. the 1 W. 4, c. 3, enacts that writs re able before the courts of Queen's Bench, Common Plea Exchequer, may be made returnable on the third day exclu before the commencement of the term, or on any day, not l Sunday, between that day and the third day exclusive befor last day of term; the day for appearance to be the third exclusive after such return; or in case the third day shall be day, then on the fourth day. Where the day of the month on w any term is to end falls on Sunday, the following Monday to b last day of the term; and in case any of the days between Thursday before and the Wednesday next after Easter fall w Easter term, such days to be deemed part of such term, th there be no sittings in banc on such intervening days.

The person who commences an action is termed the *plain* and the person against whom the action is brought, the *defend*

Before the suit is begun it is customary for the attorney fo plaintiff to write a letter to the defendant, apprizing him of demand of his client, and stating that, if not complied with, proceedings will be instituted: this intimation producing no s factory result. the action mostly begins by issuing a *writ of mons*, which is a judicial writ proceeding out of the court in w the plaintiff brings his action, directed to the defendant, comm ing him, within eight days from the service of the writ, to an appearance in the court, or, in default, an appearance wi entered for him by the plaintiff, who will thereon proceed to j ment. Writ must be served within six calendar months fro date, or, if renewed, from the date of such renewal, the da such date inclusive. By obeying the writ, a copy of whi served on the defendant, and entering *an appearance*, tha leaving a memorandum termed *an appearance*, with an offic the court, the defendant recognizes the jurisdiction, and both p tiff and defendant are now said to be *in court* and ready to *on and contest* the legal issue.

Since 1869, when the Debtors' Act, 1869, 32 & 33 V. c

was passed, no person is liable to be arrested upon mesne process in any action. But when the plaintiff in any action in one of the superior courts at Westminster, in which the defendant would formerly have been liable to arrest, proves on oath before judgment to the satisfaction of a judge, that he has a cause of action against the defendant to the amount of £50 and upwards, and that there is reason to believe that the defendant is about to leave England, by which the plaintiff will be prejudiced in the prosecution of his action, such judge may order the defendant to be arrested and imprisoned for a period not exceeding six months, unless he gives certain security not exceeding the amount claimed that he will not go out of England without the leave of the court.

We must now consider the next step, which is the PLEADINGS, or mutual statements, in legal form, of the facts which constitute the plaintiff's cause of action, or the defendant's ground of defence. They are now set down, and delivered into the proper office in writing. They begin by the plaintiff delivering to the opposite party an instrument called a *declaration*, consisting of a formal written statement of the title of the court in which the action is brought, the county, or *venue*, in which it is to be tried, and the subject-matter of the complaint or ground of action. This is followed by notice to the defendant to plead, or put in his answer, which he must do in four days, or, if a country cause, in eight days, though in either case an extension of time is generally granted on applying to a judge. The defendant may reply by a plea or a demurrer.

Pleas are of various kinds, consisting of any allegation by which the defendant endeavours to frustrate the suit; as by objecting to the jurisdiction of the court, denying the validity of the plaintiff's claim, his right of action, or by pleading a tender of payment, or set-off.

A defendant may also plead the statute of limitations, or the lapse of that period of time allowed by the 21 J. 1, c. 16, for the commencement of actions. Personal actions for trespass, or for an simple contract, must be commenced within six years after the cause of action; and actions of assault, menace, or imprisonment, within four years after the injury committed. All penal actions for forfeitures made by statute must be brought within two years. Actions on bills of exchange, attorneys' fees, and a demand for rent on *parol* lease, must be within six years.

By the Mercantile Law Amendment Act, 19 & 20 V. c. 97, s. 9, "all actions of account or for not accounting, and suits for such matters as concern the trade of merchandise between merchant and merchant, their factors or servants, shall be commenced and sued within *six years* after the cause of such actions or suits; and no claim in respect of a matter which arose more than six years before the commencement of such action or suit shall be enforced by action or suit by reason only of some other matter of claim comprised in the same account having *arisen* within six

years next before the commencement of such action or suit
absence of a creditor or his imprisonment does not entitle
a longer term within which to commence an action, and th
of limitation extends to joint debtors, though some of t
abroad, ss. 10, 11.

By 3 & 4 W. 4, c. 27, no person shall make an entry or
or bring an action to recover any land or rent but within
years next after the time at which the right to make such
distress, or to bring such action, had first accrued. In
tenants at will, the right of action accrues either at the
nation of such tenancy, or at the expiration of one year
commencement of such tenancy, at which time the te
deemed to have determined; but no mortgagor or cestui q
is deemed within the clause. Money charged on land o
deemed satisfied, unless claimed within twenty years. No
of rent, or of interest in respect of any sum of money
upon or payable out of land or rent, or in respect of any l
recoverable after the expiration of *six years* from the
same may have respectively become due.

By the Common Law Procedure Act, 1852, 15 & 16 V
material changes were made in the method of procedur
superior courts of common law. New forms of writ wer
and the defendant empowered to demand of any attorn
name is endorsed on the writ, whether such writ has bee
by him, or with his authority or privity; and if he answe
affirmative, then he shall also, within a time allowed
court, on pain of contempt, declare in writing the pr
occupation, or quality and place of abode of the plaintiff
he answers in the negative, all proceedings shall be stayed,
be renewed without leave of the court or judge. Co
writs may be issued, and may be served in any county.
where personal service cannot be effected, and it shall be
appear to the court that defendant knows of the writ,
he wilfully evades service, and reasonable efforts have be
to effect service, the court may order plaintiff to proce
personal service had been effected.

With regard to *pleadings*, it is provided that where th
are agreed as to the question of fact to be decided betwe
they may, by consent and order of a judge, proceed to trial
formal pleading, and such question may be stated in a fo
in the schedule to the effect that A. B. affirms and C. I
the matter in issue. The parties to a suit may enter
agreement that, upon the finding of the jury in the affirm
negative, a sum of money, fixed by the parties or to be asc
by the jury, shall be paid by one to the other of them. Q
of law may be raised after writ issued without pleadi
parties may make agreements as to money and costs, to
according to the judgment in such special case. Fictiti
needless averments are not to be made, and either p

object by demurrer to the pleadings of the opposite party, on the ground that such pleas do not set forth sufficient ground of action, defence, or reply; and where issue is joined on such demurrer, judgment may be given "on the very right of the cause." Objections by way of special demurrer are taken away, and pleadings so framed as to prejudice, embarrass, or delay, may be struck out or amended. The former verbose and cumbrous declarations are abolished, and a simple form of declaration given.

Another provision tended to save expense in the causes to which it applied. It is that either party may call on the other by notice to admit any document, saving all just exceptions; and, in case of refusal or neglect to admit, the cost of proving such document is to be paid by the party refusing or neglecting to admit it, whatever the result of the trial may be, unless the judge shall certify that the refusal to admit was reasonable.

Some other salutary enactments pertain to the abatement of suits. In future, the death of a plaintiff or defendant is not to cause an action to abate, but it may be continued by or against the personal representative; and if one plaintiff or defendant should die, and the cause of action shall survive to the surviving plaintiff or defendant, the action is to proceed. It is also provided that the marriage of a female plaintiff or defendant is not to abate an action; and that in case of the bankruptcy or insolvency of a plaintiff, his assignees may, within a given time, continue the action.

Procedure was further amended in 1854, by 17 & 18 V. c. 125, which the parties to a cause, by consent in writing, may leave the decision of any issue of fact to the court; and the verdict is the same as the verdict of a jury, save that it shall not be questioned on the ground of being against evidence.

Resuming the progress of a lawsuit after the pleadings, the next stage of procedure is the Issue, which may be either upon matter of *law* or matter of *fact*. An issue upon matter of *law* is called a *demurrer*, in which the statement of facts is admitted; but it is denied that the law arising upon those facts is such as stated by the opposite party. An issue of *fact* is where the fact only, and not the law, is disputed.

Here it may be proper to observe, that during the whole of these proceedings, from the time of the defendant's appearance in obedience to the writ of summons, it is necessary that both the parties be in court from day to day, till the final determination of the suit. For, if either party neglect to put in his declaration, plea, or the like, within the time allowed, the plaintiff, if the default be his, is said to be *nonsuited*, or not to follow and pursue his complaint, and he loses the benefit of his writ; or if the negligence be on the side of the defendant, judgment may be had against him for *default*. But these observances and attendances, as it is almost needless to remark, are all performed by the attorneys of the respective parties, though the plaintiff

and defendant are ostensibly before the court, and bear consequences of its proceedings and adjudication.

An *issue of law*, or demurrer, is determined by the after hearing argument by counsel on both sides. But a of fact may take up more form and preparation to set for here the matter alleged must be investigated before by the questioning of witnesses, and whatever evidence adduced to establish the truth. This examination of f properly the TRIAL BY JURY, to which the preceding st a lawsuit are only preliminary steps. Of the constitutic mode of summoning and empannelling juries, and also nature of evidence, we shall speak more at large hereaf present we shall continue the progress of the suit to its termi

The jury being sworn, the pleadings are opened to th the counsel for the plaintiff, who states the nature action, and the evidence intended to be produced in its port; when the evidence of the plaintiff is gone throug counsel for the defendant states his case and supports evidence; and then the party who began is heard in re witnesses have been called by the defendant in support case, otherwise no reply is allowed to plaintiff's counsel.

By 17 & 18 V. c. 125, s. 18, it is provided that the trial of any cause, the addresses to the jury shall be reg as follows: the party who begins, or his counsel, shall be al in the event of his opponent not announcing, at the c the case of the party who begins, his intention to addu dence, to address the jury a second time at the close c case, for the purpose of summing up the evidence; and th on the other side, or his counsel, shall be allowed to op case, and also to sum up the evidence if any; and the to reply shall be the same as at present." Court may a a trial, subject to such terms as to costs as it thinks fit, Affirmation in lieu of oath allowed to parties who reli object to be sworn.

Both sides having finished, the judge sums up the wl the jury, omitting all superfluous circumstances; ob wherein the main question and principal issue lie; what evidence has been given to support them, with remarks as he thinks necessary for their direction; and his opinion on matters of law arising upon that evidenc in his direction, the judge mistake the law, either t inadvertence or design, the counsel on either side may him publicly to seal a *bill of exceptions*, stating the p which he is supposed to err; and this he is obliged to se if he refuse, the party may have a compulsory writ again commanding him to seal, if the fact alleged against h truly stated.

Next follows the VERDICT, which, to be valid, must be

y agreed to by the jury, and delivered publicly in court.
a verdict will carry all the costs, and it is doubtful
the evidence for which party it will be given, it is common
judge to recommend, and the parties to consent to *withdraw*
ur; then no verdict is given, and each party pays his own

r the verdict follows the JUDGMENT of the court: judg-
may, however, where there has been any defect in the
be suspended or arrested, for it cannot be entered till
ext term after trial had, and that upon notice to the
arty.
es for suspending judgment, by granting a *new trial*,
rise for want of due notice of trial; improper behaviour
jury among themselves, or of the plaintiff towards them
ich their verdict is influenced; misdirection of the judge;
rbitant damages: for these and similar reasons a new
rill be awarded. But if two juries agree in the same or
ar verdict, a third trial is seldom conceded.
e judgment is not appealed against, suspended, or reversed,
sult and last stage in the proceedings of a suit is the
TION, or the putting the sentence of the law in force.
ion is of divers kinds. If the plaintiff obtain a verdict
y the possession of land is awarded to him, a writ is
d to the sheriff, commanding him to give actual possession
plaintiff; and the sheriff may justify breaking open
f the possession is not peaceably yielded. But if quietly
ap, the delivery of a twig or turf, or the ring of the door,
form of putting in possession, is sufficient.
utions in actions, where money only is recovered, may be
against the goods and chattels of the defendant.
y writ of execution must be sued out within a *year and*
after the judgment is entered; otherwise the court
es that the judgment is satisfied and extinct.
5 & 16 V. c. 76, s. 120, in a verdict obtained out of
execution may issue in fourteen days, unless the judge
n earlier or later day. The same act provides, that the
execution may be directed to the sheriff of any county
t reference to *venue*; that it is to remain in force for one
ad to be renewed if necessary.
3 & 4 W. 4, c. 42, is intended to lessen the expense
cilitate judicial process. Executors may bring actions for
committed to the *real* estate of the deceased during
etime; and the contrary against executors, for injuries
erty, real or personal, by the testator. Statutory limi-
are, for the first time, put to the periods within which
may be brought on bonds and other deeds, judgments,
er matters on record. Pleas of abatement as to misnomer
-joiner of a co-defendant are restricted.

The power to pay money into court is extended
of uncertain amount, either for breach of contrac
wrong; hitherto it had been limited to *debts* strictl
Power is given to juries to allow *interest* upon s
sums certain, payable at a certain time by virtue
instrument. Executors suing in right of testator,
to *costs* in case of nonsuit or verdict passing against
case of arbitrations, the parties having mutually
reference, neither of them allowed to revoke witho
court. Lastly, no *holidays* are allowed in the courts
law, or in offices appertaining thereto, except Sund
mas-day, and the three following days, and Monday
in Easter week.

The 23 & 24 V. c. 34, amends the law relating
of right, simplifies the procedure therein, makes
the recovery of costs, and assimilates the proceedi
as may be to practice in actions and suits between
subject. Petitions of right, if the supplicant thi
be preferred in any of the superior courts of com
equity at Westminster; the petition being left wit
secretary for her Majesty's consideration, upon fi
petition to be left with solicitor of the Treasury. Th
clauses refer to ulterior proceedings, and take effect
amoveas manus.

Before concluding, we must say something of c
form an inseparable and material adjunct to ev
For the most part, costs are paid by the vanqui
except in a few instances, privileged by statute or
Persons who will swear themselves not worth £5
writs and subpœnas gratis, and counsel and attorn
them without fee; and are excused from paying
plaintiffs, but shall suffer other punishment at th
of the court. The prosecutor, in any action for
penalty, is not entitled to costs, unless expressly g
statute. To prevent trifling actions for assault,
trespass, it is enacted that, where the jury gives
than £20 in an action arising on a contract, or £1
on tort, the plaintiff shall be allowed no costs unle
shall otherwise order. In actions for slander, no
40*s.* ever carries costs; the defendant having jus
makes no difference, and there is no certificate granta
party. But in actions for libel, crim. con., sedu
contract, or consequential damage, the smallest da
full costs, whether the defendant has justified or
the judge certifies in *favour of the defendant;* wh
the plaintiff of his costs.

DIFFERENT LAWS, HOME AND FOREIGN.

For improving the administration of the law by affording
ilities for more certainly ascertaining the law administered
one part of the queen's dominions when pleaded in the courts
another part, it is enacted by 22 & 23 V. c. 63, that if
any action depending in any court of her Majesty's dominions,
e court shall be of opinion it is expedient, for the proper
posal of the action, to ascertain the law applicable to the
ts of the case as administered elsewhere, on any point in
ich the law is different, the court may remit a case, setting
th the facts as ascertained by the verdict of a jury or other
mpetent mode, for the opinion in law of a court in any other
rt of the empire. It is competent to any parties in the action
present a petition to the court whose opinion is sought, to
heard by counsel, or the court may, without hearing parties
counsel, pronounce its opinion on the questions of law
ich have been submitted to it. Such opinion to be certified
an officer of the court, and a copy given to each of the
rties in the action. Either party may then move the court
m which the remit issued, and the opinion obtained be sub-
itted to the jury. Her Majesty in Council, or the House of
rds, on appeal, may adopt or reject the opinion of the law
procured. The word "action" in the act, includes every
dicial proceeding instituted in any court—civil, criminal, or
clesiastical, ss. 1–5.

By 24 V. c. 11, like facilities are afforded for ascertaining in
ilar circumstances the law of any *foreign country;* and if,
any action depending in any of the superior courts within
r Majesty's dominions, it shall be the opinion of the court
at it is expedient, for the disposal of such action, to ascertain
e law applicable to the facts of the case as administered in
foreign state with the government of which her Majesty has
tered into a convention, it is competent to the court in which
e action depends to direct a case to be prepared setting forth
e facts, as these may be ascertained by verdict of jury or
her competent mode, or as may be agreed upon by the parties,
settled as appointed by the court for that purpose in the
ent of the parties not agreeing: upon such case being approved
by the court, the court to settle the questions of law arising
t of the same on which they desire to have the opinion of
other court, and pronounce an order remitting the same,
ether with the case, to such superior court in such foreign
ate, as agreed upon in convention, whose opinion is desired
on the law administered by foreign court as applicable to
e facts set forth in the case, and requesting them to pronounce
eir opinion on the question submitted to them. Upon such
inion being pronounced, a copy thereof, certified by an officer

of such court, to be deemed to contain a correct record of the opinion. Courts in any part of her Majesty's dominions may pronounce opinion on a case, remitted to ascertain the law by any foreign court in convention, and, *vice versâ*, obtain an opinion from abroad. The word "action" to apply as in the preceding statute.

CHAPTER III.

Procedure in the Courts of Equity.

THE essential difference between the courts of law and of equity consists principally in the subjects of their jurisdiction, the nature of the remedy they provide, and in their methods of procedure.

It will be convenient to divide the subjects over which courts of equity exercise jurisdiction into two heads.

First. Those of which no notice has ever been taken by the courts of law and which the courts of equity recognize.

Secondly. Those over which the courts of equity have a jurisdiction concurrent with the common law courts.

The first head may conveniently be subdivided into (1) trusts, (2) administration of the estates of deceased persons, (3) property of married women, (4) mortgages, (5) protection of infants. A trust is a beneficial interest in or beneficial ownership of real or personal property unattended with the legal ownership which is in a person called a trustee. The person having the beneficial interest in property is commonly called the "cestui que trust" (*see* Trustees and Joint-stock Companies). In the administration of the estates of a deceased person, the aid of the court may be sought by creditors, legatees, and persons interested in the residue (*see* Executors and Administrators). The property of a married woman includes her capacity to hold a separate estate and her equitable right to have a settlement made on her out of any property to which her husband may become entitled in possession in her right (such as a legacy above the value of £200 left to her by will), and in order to obtain which the aid of a court of equity must be sought (*see* Husband and Wife). The courts of equity will interfere in aid of the right of redemption of an estate which has by the terms of a mortgage become liable to forfeiture (*see* Mortgages). The power of the courts of equity, which is paramount to that of the father or guardian, is exercised in the protection of an infant only in the cases in which the infant is possessed of some property, and thus becomes what is called a ward of court, though such possession is not actually necessary to sustain the jurisdiction (*see* Infant).

The second head may be divided into (1) fraud, accident, mistake, *(2) partnership, (3)* agreements, (4) accounts.

courts of equity can compel a defendant to answer upon
tailed interrogatories respecting the alleged facts and circum-
of a fraud, and can also interfere to annul deeds fraudulently
d. They can also interfere in the cases of instruments in
which have been lost by accident, as upon a bond being lost
of equity can compel payment of the amount secured, and
e of a clause being put into a deed by mistake a court
ity will sometimes interfere to make the deed what the
intended it should be. The courts of equity will, upon or
view to a dissolution of partnership, order the necessary
ts to be taken and direct the partnership property to be
d, and adjust all questions connected with the partnership,
ree a dissolution of partnership where a partner has com-
a breach of the partnership articles, or has become in-
e of fulfilling his duties. They will in cases of necessity,
a dissolution of partnership is contemplated, indirectly by
of a receiver assume the management of the partnership
. The courts of equity will order specific performance of
reement instead of giving damages for the breach of it,
h they have recently, under Lord Cairns' Act, been empowered
tain cases to award damages to the party injured by a breach
ntract. The courts of equity also assume jurisdiction on the
ts of account in favour of a principal against his agent, but
vice versâ, and where there are mutual accounts between
iff and defendant, and under circumstances of special com-
ion. The courts of equity will also order a partition of an
amongst those entitled to it in such shares as are equitable,
hey have power to order a sale if they think fit.

e most important form of relief given by the courts of equity
ere they grant an injunction, which is a judicial process
by a party is required to do or refrain from doing a par-
r thing, and may be obtained in a variety of cases to restrain
lverse party in a suit from committing any acts in violation
plaintiff's rights, and also to restrain a person from proceeding
n action (where it is of a strictly civil nature) or from en-
a judgment he has recovered. In some instances of an
nature, an injunction may be obtained immediately upon
stitution of a suit without any previous notice to the oppo-
rty. Injunctions are either temporary, as until the hearing
ause, or perpetual, and are total or partial, qualified or un-
nal. Some are of a preventive, others of a restorative
er. The courts of equity will interfere to restrain irre-
mischief, and will therefore grant an injunction in order
restrain waste, as when the tenant for life of an estate
houses or gardens, or cuts trees that are not ripe for
or permits a house to fall out of repair to such an extent
is in danger of being permanently injured or destroyed, or
estrain the infringement of patents or of a copyright, or (3)

to restrain the negotiations of bills of exchange before they be due when they are given for an illegal consideration or are ta with fraud. The court will also interfere by injunction v there has been a palpable imitation of "trade marks," so deceive purchasers.

Several modern statutes have been passed which affect the of Chancery, but the general orders still chiefly guide its pra These were consolidated in 1860, and the regulations as to fee charges in Chancery condensed, arranged in one volume u the auspices of Lord Chelmsford. Alterations and additions since been made, and regulations as to the business at chan issued, from time to time, and in the same year an act, 23 & 2 c. 128, was passed for the purpose of enabling the lord chan and judges of the court of Chancery to carry into effect, by ge rules and orders of the court, the recommendations of commissi who were appointed in 1859 to inquire into the mode of t evidence in the court of Chancery. An ordinary suit in Cha on behalf of a subject (analogous to an action in the common courts) is commenced by preferring a bill of complaint. I suit is instituted on behalf of the crown, or of those partaking privileges or under its protection, such as the objects of a p charity, it is commenced by information, which is in the natu a bill of complaint. A suit for the administration of an e may be commenced without a bill by the creditors, legatees, or of kin of the deceased person applying at chambers by a summ There is also a mode of proceeding by special case not often use of. In certain cases in which the jurisdiction of the cou grounded on some act of parliament, such as the Trustees' A 1850 & 1852, the Lands Clauses Consolidation Act, the Comp Acts, 1862 & 1867, and the Leases and Sales of Settled Estates authorizing the proceedings, they are commenced by an affida petition. All persons, including bodies politic and corporate as a rule institute a suit or have one instituted against them idiots and lunatics must sue by the committees of their estate for that purpose ought to obtain the sanction of the lord chan before doing so. The committee of an idiot or lunatic together with such idiot or lunatic, be made defendant. Where is no committee, or where the committee has adverse interes that of the person committed to his care, or where a person unsound mind, though not so found by inquisition, the cour direct a guardian to be appointed. An infant can only sue adult, who in such case is called his next friend. An infan appear to a bill, but cannot take any step in the suit until a g ian *ad litem* has been appointed him for that purpose. A ma woman must sue by her husband, or in the case of separate by her next friend. In a suit against a married woman, her band must be made a party, except where he is an exile, or the *has obtained* a protection order, or a decree of judicial sepa

le divorce act, in which case the wife is considered as an
al woman (*see* Court of Divorce).
ubject-matter of any suit must be of greater value than
the suit will be dismissed, except under some special cir-
es. County courts have in certain suits all the power
urity of the court of Chancery (*see* County Courts). It
al rule of the court that all persons interested in the
atter in dispute should be parties to the suit, either as
or defendants. This is, however, subject to certain excep-
modifications; *e. g.* a single creditor may sue on behalf of
and all other creditors for the administration of a deceased
estate, and a shareholder in a company may, either as
or defendant, represent all members of the company not
hostile interest.
of complaint (which is not verified by oath) sets forth
nstances of the case, such as frauds or trusts, and prays
, or, if the object be to stay waste or other injury, for an
n. It must be signed by counsel, and must not contain
dalous or impertinent matter. It must be printed and
scribed to it the names of the defendants, and the name
ess of the plaintiff's solicitor. It is filed in court and
the defendant by delivery to him of a copy, or leaving
is house. On the bill is an endorsement commanding
to appear within eight days after. Upon the defendant's
e, the plaintiff is entitled to have him examined in answer
ll, and may file interrogatories for that purpose.
of the interrogatories must be delivered to the defendant,
in due time must put in his demurrer, plea, or answer,
do so even if the plaintiff does not require it.
urrer is a method of taking the judgment of the court
ther, admitting the statements in the bill to be true, the
is entitled to relief from the court. If the demurrer be
the bill is dismissed; if not, an answer is ordered.
, which the defendant is bound to prove if required, is
on some matter not on the face of the bill, and may be to
iction of the court or in bar, showing some single matter
the plaintiff from demanding relief, such as an act of
t (*e. g.* the statute of limitations).
wer is the most usual mode of defence that is made, and
ath. It is the personal statement of the defendant as to
ters of fact referred to in the bill. It must either con-
ny all the material points. Where it does not deny, it
fy and palliate the facts. It may also contain such state-
ure material to make out the defendant's case.
laintiff, if he considers the answer insufficient, may file
to it, or may admit the answer to be true and proceed to
or he may file a replication (which is the most usual case)
e truth of all or any matters contained in the answer.

The case is then considered to be at issue, and the plaint defendant then proceed to prove the facts, and may apply t judge or in chambers for an order that the evidence in chief any particular fact may be taken *viva voce* at the hearin which case the cross-examination and re-examination, as well a examination in chief, are taken before the court at the hear the cause. When there is no application, each party can veri case by the oral examination of witnesses *ex parte* befo examiner, who takes down the depositions and transmits th the record office to be filed; at such examination only the producing the witness, his counsel, solicitor, or agent shall h right to be present. The evidence must be closed within a li period, and the cause is then ripe for a hearing, and either may be subpœnaed to hear judgment on the day fixed for the ing of the cause. It is necessary to mention here that the pl may under any circumstances, instead of filing a replication answer or after the time for answer has expired), move the for such decree, or order by way of a decree, as he may deem self to be entitled to, and in such case both the parties will liberty to file affidavits, and the cause will be disposed of summ *upon motion*. The method of hearing the cause in court (wh always one of the vice-chancellor's courts) is as follows. Both appear as a rule by counsel (though either is at liberty to a personally), and the plaintiff's counsel state his case and rea affidavits and depositions in support of the plaintiff's case, an any part that is thought advisable of the answer; the defen counsel then do the same thing for him, and the leading plai counsel is heard in reply.

The judges may adjourn from open court to chambers, c contrary, the consideration of any matter; the mode of proce at chambers is by summons, as at common law, and the j may direct what shall be investigated by their chief clerks what by themselves. The result of the proceeding before the clerk is to be embodied in the form of a certificate, to which is to be no exception; but the parties may take the opinion c judge on any particular point arising in the course of the pr ings, or upon the result. Judges may take the opinion of co ancing counsel when sitting at chambers, and the lord chan may nominate six conveyancing counsel, whose opinions are thus taken. The judges may also obtain the assistance of acc ants, merchants, engineers, actuaries, or other scientific pe and act upon their certificate.

When the decree is pronounced, it is either interlocutory or It is almost always interlocutory at first, and directs certain inq when the inquiries are completed, the cause is again brought the court and a final decree made, and must be signed by th chancellor.

An appeal lies from a decree (before it has been signed

from any one of the vice-chancellors to the lord
ny time within two years from the date of the
rice-chancellor or lord chancellor, to the House of
ng lord chancellor may deliver written judgments
after his resignation.

CHAPTER IV.

Procedure.—Summary Convictions.

he progress of redress for private injuries, we
: mode of criminal procedure for the punishment
: the public; and of which the first step is in the
nou of the delinquent. In criminal cases, every
) arrest without distinction; but no man is to be
harged with such a crime as will at least justify
ail when taken.
rrest are usually issued on application to a justice
y should set forth the time and place of making,
which they are made; and should be directed to
other peace officer, requiring him to bring the
her generally before any justice of the county, or
stice who grants the warrant. The warrant, in
called a *special* warrant.
ant, to apprehend *all* persons suspected, without
on in particular, is illegal; so is a warrant to
sons guilty of a crime therein specified.
: the chief or other justice of the court of Queen's
over the kingdom, and is dated "England," not
:a, or other particular county. But the warrant
ace in one county, as Yorkshire, must be backed,
r a justice of another, as Middlesex, before it can
. So a warrant to apprehend an offender escaped
o Ireland or Scotland, must be endorsed by the
f the district in which he is found.
as a justice, sheriff, coroner, constable, or watch-
without warrant: and even a *private* person who
felony is committed is bound by law to arrest the
fine and imprisonment if he escape through the
stander-by. An arrest by warrant may be made
ıy time of the day or night, for treason, felony, or
ce.
der is arrested, the justice before whom he is
immediately to inquire into the circumstances of
and to take the examination of the prisoner, and
those who bring him, in writing; if the charge

appear wholly groundless, the prisoner must be forthwi charged; otherwise he must be *committed*, or give *bail* for pearance to answer the accusation at the next sessions or a and the prosecutor, or person injured by the crime charged, is over to prosecute.

To refuse or to delay to bail any person liable, is an against the statute as well as common law. Formerly, all were bailable, but many offences are now excepted by statut justice of peace can bail upon a charge of treason, murder, or manslaughter, if the prisoner be clearly the slayer, and not suspected to be so. But in case of other felonies commit persons of bad character, and of notorious thieves, the justic bail or not at their discretion.

The court of Queen's Bench, or any judge thereof, in t vacation may bail for any crime; but no one can claim this as a matter of right. And the House of Lords may bail committed on an indictment for murder. If the party can tain bail, he is committed to the county jail, or house of corr by the *mittimus* of the justice, or warrant under his hand an containing the cause of his committal. No prisoner can be for felony by less than two sureties; and the amount of ba depend on the rank of the accused and the nature of the offe

The next step towards the punishment of the accused is t senting an INDICTMENT, or written accusation, against him *grand jury*. The grand jury is summoned by the sheriff, ing of not fewer than twelve, nor more than twenty-three, principal men of the county, who are previously instructed subject of their inquiries by a charge from the bench. The withdraw to sit and receive the indictments which are pr to them; and they are only to hear evidence on behalf of t secution. In common cases of felony and misdemeanor, the indictments prepares the proper indictment, from the dep that have been returned to the court by the committing trates; sometimes the indictment is framed by a barrister or draftsman, in which case the clerk of indictments only pa receiving his fee as if he had drawn it: on the back of the ment the names of the witnesses for the prosecution are wri

For expediting the proceedings of grand juries, by the 1 V. c. 54, persons attending to give evidence before them sworn in the presence of the jurors, and be examined on oat the foreman to write his initials against the name of each so sworn and indorsed on the bill of indictment. The wor man includes any person acting in his name.

When the grand jury have heard the evidence for the p tion, if they think the accusation groundless, they write on th of the bill, *Not a true bill*; or, which is the better way, *Not* and then the party is discharged. But a fresh bill may afte be preferred to a subsequent grand jury. If they be sati

of the accusation, they indorse upon it, *A true bill*, and stands indicted. The indictment is then said to be
it to find a bill, at least twelve of the jury must concur.
) person can be convicted of a capital charge without the
s voice of twenty-four of his neighbours and equals; that
lve at least of the grand jury first assenting to the accu-
d afterwards by the whole of the petit jury of twelve
ng him guilty.
rent *vexatious indictments*, the 22 & 33 V. c. 17, pro-
t no bill of indictment for perjury, subornation of
conspiracy, obtaining money or other property by false
, keeping a gambling-house, keeping a disorderly house,
ıdecent assault, shall be presented to or found by any
y, unless the person presenting such indictment has been
give evidence against the person accused, or unless the
ıas been committed to custody, or has been bound by
nce to appear to answer to an indictment for such offence,
s such indictment for such offence, if charged to have
ımitted in England, be preferred by the direction or with
nt in writing of a judge of one of the superior courts, or
Majesty's attorney or solicitor general, or unless such
nt for such offence, if charged to have been committed
ıd, be referred by the direction or with the consent in
f a judge of one of the superior courts of Dublin, or of
sty's attorney or solicitor general for Ireland; or, in the
perjury, by the direction of any court, judge, or public
ıry authorized by the 14 and 15 V. c. 100, to direct a
ion for perjury, s. 2. When the prosecutor desires to prefer
ment, and the justice refuses to commit or bail the accused,
e may take the recognizance of the prosecutor to prosecute,
mit the recognizance.
is another mode of carrying on a criminal process, without
vention of a grand jury, namely, by INFORMATION in the
the queen, or jointly at the suit of the queen and that of
ct. The latter is usually brought upon penal statutes,
ort of *qui tam* action, and carried on only by a criminal
f a civil process. Informations in the name of the queen
officio, by the attorney-general, and are directed against
ders as tend to disturb and annoy the government, and
in punishing which might be dangerous.
ıtions by the crown, for misdemeanors, whether by
on or indictment, are laid under certain regulations, by
3, and 1 G. 4, c. 4; which provide that, in such cases,
shall, if required, order a copy of the information or
it to be delivered, after appearance, free of expense, to
dant; and if the attorney or solicitor general shall not
issue to trial within twelve calendar months after the
ot guilty pleaded, the court may, on the defendant's

application, of which twenty days' notice must be attorney or solicitor general, allow the defendant to trial.

By 7 G. 4, c. 64, s. 19, no indictment or informa abated by any dilatory plea of *misnomer* or *wrong* the court be satisfied of the truth of such plea; case, the court shall forthwith cause the indictment o to be amended, and call upon the accused to plead no such dilatory plea had been pleaded.

To continue the process: whether the procedure b vious finding of a grand jury or by information, the the prosecution is the ARRAIGNMENT of the prisoner, c him to the bar of the court, to answer the charge When he is brought to the bar, which must be with bonds, unless there be danger of an escape, he is cal name to hold up his hand. By holding up his hand he self to be of the name by which he is called. The i then read to him; after which he is asked whether h not guilty. The prisoner usually answers *Not Gu* simple and plain confession of guilt, the court has n but to award judgment; but it is generally backward and recording such confession; and it mostly counsels to retract it, and plead to the indictment.

When the prisoner has pleaded *Not Guilty*, he is de put himself on his country for trial, and the court jury for the trial of such person accordingly. If the a to plead, or stand mute, the court may direct the pro enter a plea of *Not Guilty* on his behalf, which has t as if he had actually pleaded.

When the jury is sworn, if it be a cause of any the indictment is usually opened, and the evidenc examined, and enforced by the counsel for the c secution.

The accused may make their defence, and examin examine witnesses by counsel or attorney. Copies c are also to be allowed the accused, provided applica for them prior to the day appointed for the commenc sessions or assize; and prisoners under trial may in tions against them without fee.

When the case for the prosecution is closed, the pr counsel addresses the jury and examines witnesses for to which the prosecuting counsel has the right of a jury in reply, if witnesses have been called for the d for the purpose of proving the prisoner's characte defence rest entirely on character and cross-examinat cutor's witnesses, the prisoner or his counsel has the l *no reply is allowed* to the opening counsel. The evi *sides being closed*, the judge sums up, as in civil ca

jury deliberate on their verdict, and until a verdict be given they cannot be discharged. If they find the prisoner not guilty, he is liberated; but if they find him guilty, he is said to be CONVICTED of the crime whereof he stands indicted.

Upon conviction, two collateral circumstances immediately arise: 1. On conviction, or even upon acquittal, when there was sufficient ground to prosecute, the reasonable expenses of the prosecutor are to be allowed out of the county stock, if he petition the judge for that purpose. Also, persons appearing upon recognizance or subpœna to give evidence, are entitled to their expenses, and a compensation for loss of time. 2. On a conviction of larceny, the prosecutor shall have restitution of his goods, which the judge usually orders to be immediately carried into effect, with respect to goods brought into court.

The next stage of a criminal process is the JUDGMENT. Upon a capital charge, when a jury have brought in their verdict of guilty, in the presence of the prisoner, he is either immediately, or at a convenient time after, asked if he has anything to offer why judgment shall not be awarded against him; after which, if nothing can be urged in arrest of judgment, the judge pronounces sentence.

Of the different punishments annexed to crimes we shall have occasion to speak hereafter.

If there be no reversal of judgment by any proceeding in error, the only remaining way of avoiding the execution of the sentence is by a REPRIEVE OR PARDON.

A reprieve or respite is merely a suspension of the execution, and may be either before or after judgment. If the judge is not satisfied with the verdict, or the evidence is suspicious, or the indictment is insufficient; or if it be a small felony, or any favourable circumstance appears in the criminal's character, he may grant time to apply to the crown for entering an absolute or conditional pardon. In this case the judge sends a memorial or certificate to the queen, directed to the secretary of state's office, stating that, from favourable circumstances appearing at the trial, he recommends him to the queen's mercy, and to pardon, upon condition of transportation or other secondary punishment.

Reprieves may also arise from natural causes, as where a woman is capitally convicted, and pleads her pregnancy. In this case the judge directs a jury of matrons to inquire into the fact, and if they bring in their verdict *quick with child* (for, unless the child be alive in the womb, it is not sufficient), the execution is stayed, either till she is delivered, or proves, by the course of nature, not to have been with child at all. But if she prove with child a second time, she cannot have the benefit of this reprieve; for she may be executed before the child quickens, and the law will not be evaded by her incontinence.

Another cause of reprieve is, if the offender become *insane*

[redacted]

The [redacted] of [redacted] is [redacted] the [redacted] of [redacted] and [redacted] of all offences against the [redacted] committed within the limits of [redacted] where the [redacted] is [redacted] or [redacted] and [redacted] the [redacted] [redacted] which [redacted] [redacted] [redacted]

e sheriff cannot alter the mode of punishment, by substituting
kind of death for another, without being guilty of felony. It
ld by Sir E. Coke and Sir Matthew Hale, that even the sove-
cannot change the punishment by altering the hanging into
ding, though, when beheading is part of the sentence, he
remit the rest. If, upon judgment to be hanged till dead,
riminal revives, the sheriff must hang him again, the former
ng being held no execution.

ere is also another form of judicial procedure, namely, by
mary conviction before justices of the peace.

summary proceedings are principally meant such as are
ed by several acts of parliament for the conviction of
lers, and the infliction of penalties created by those acts of
ment. In these there is no intervention of a jury, but the
accused is acquitted or condemned by the suffrage of such
n only as the statute has appointed for his judge.

this summary nature are all trials of offences and frauds
ary to the laws of the excise and other branches of the
ue, which are inquired into by the commissioners of the
ctive revenue departments, or by justices of the peace in the
y where they occur. Another branch of summary procedure
t before justices of the peace, in order to inflict petty pecu-
fines and corporal penalties, denounced by act of parliament
sorderly offences; such as poaching, malicious mischief, com-
swearing, drunkenness, vagrancy, idleness, and a vast variety
ers, all of which formerly used to be punished by the verdict
ury in the court leet.

e process is extremely brief: after summoning the offender,
agistrate proceeds to examine one or more witnesses, as the
e may require, upon oath; he then makes his conviction in
g, upon which he usually issues his warrant, either to appre-
the party, in case corporal punishment is to be inflicted, or
levy the penalty incurred by distress and sale of goods.

the 18 G. 3, c. 19, justices out of session are also empowered
ard *costs* against either the person complaining or the person
st whom the complaint is made; which, if not paid, may be
by distress; or, if no distress can be had, such person may
mmitted to hard labour for any time not less than ten days
ore than a month.

m these convictions there is no *appeal*, unless it be expressly
by the statute; but the party has in general a right to a
rari to remove the conviction into the court of Queen's Bench.

an appeal is given to the sessions, the magistrates should
known to the convicted party his right to appeal; but if he
e appealing, they are not required to inform him of the
ary steps to be taken to appeal. Upon appeal the magis-
are bound to receive any fresh evidence, though not tendered
former hearing. 3 *M.* & *S.* 133.

The defendant is entitled to require a copy of the (from the convicting magistrate.

When an appeal is allowed, the conditions or direction ing such appeal must be strictly complied with; and t must be to the next quarter sessions of the jurisdiction the conviction takes place, unless otherwise specially apj the statute giving the right of appeal.

These summary proceedings are unknown to the com and appear to have arisen from the increase of popul multiplicity of our fiscal regulations, the demoralization c delinquents from protracted imprisonment with older before trial, and the expense and delay of bringing a r petty offences before the regular tribunals of criminal ju

By 5 & 6 V. c. 38, the justices holding sessions of the not allowed to convict for any capital felony, or felony (accused has been previously convicted) subjecting to tran for life; nor for offences against the queen or parliamen blasphemy, administering unlawful oaths, bigamy, s seditious or blasphemous libels.

The 20 & 21 V. c. 43, is intended to obtain the opi superior court on questions of law which arise in the (summary jurisdiction by justices of peace, police, or oth diary magistrate. By s. 2, one or more justices, on app any party aggrieved by their decision, as being erroneou of law, may, within three days after, apply to them to st for the opinion of a superior court; the applicant to tran case to the superior court, and give security to abide costs may refuse a case, if frivolous; but court of Queen's B order a case to be stated. Power of superior court may be by a judge at chambers, s. 8.

For the more speedy trial of *juvenile offenders*, and to evils of their long imprisonment before trial, it is enacte 11 V. c. 82, extended by 13 & 14 V. c. 37, that perso ceeding sixteen years of age, guilty of any theft that th siders simple larceny, or aiding in its commission, ma marily convicted by two judges, and sentenced to imp for not exceeding three calendar months, with or witl labour, or to forfeit any sum not exceeding £3, or, if a be once privately whipped, either instead of or in additi punishment; or the whipping, inflicted by a constable, n of prison. But offenders under these acts above fourte liable to whipping. Justices may dismiss the accused if it expedient not to inflict any punishment, with or witho for future good behaviour, giving the accused a certificat dismission as a bar to future proceedings. Justices are to ask the accused if they wish the charge to be tried by either accused or parents object to a summary convictio *to proceed with* the case as before the acts. *One* police

olis, or stipendiary magistrate elsewhere, has jurisdiction. ay order restitution of stolen property.

II. RECOGNIZANCE.

has provided a method for the prevention of crimes as nishing them when committed. This preventive justice i obliging persons whom there is reason to suspect of deeds, to enter into a *recognizance* to keep the peace, or behaviour.

nizance is an obligation, with one or more sureties, en- before a court of record, or magistrate duly authorized, specific act, as to appear at the sessions, keep the peace, . In default, the recognizance is forfeited to the crown, rty and his sureties may be sued for the sums in which spectively bound.

of peace may demand security at their own discretion, be granted at the request of a private individual, upon shown. Wives may demand it against their husbands, ls, if necessary, against their wives.

may bind a person over for offences against good man- ell as against the peace ; as for haunting bawdy-houses, women of bad fame in his house, or for words tending ze the government, or in abuse of the officers of justice. es may bind over all eaves-droppers, reputed thieves, runkards, cheats, or vagrants. It is even held, though authority, that justices may demand bail of persons th *libel* before the indictment is found, *Butt* v. *Conant*, 48.

spect to the exhibition of *articles of the peace*, there e a reasonable foundation, on the face of the articles, to ear of personal danger before sureties of the peace will be 13 *E. R.* 172. The court may require bail for such a time as they shall deem necessary for the preservation of , but are limited to a twelvemonth, *Rex* v. *Bowes*, 1

nizance may be forfeited by the commission of any of which the party is bound to refrain from ; or it may be l either by the demise of the queen, to whom the recog- made, or by the death of the principal party ; or by the the court to which it is certified ; or in case he at whose is granted, if granted upon a private account, will re- r does not make his appearance to pray that it may be l.

3. 4, c. 64, no recognizance is to be estreated without the rder of the justice, recorder, corporate *officer, chairman*, e of peace, to whom a *list of forfeited recognizances* must itted by the *officer of estreats*.

CHAPTER V.

JURIES.

THE trial by jury, or the empannelling of an assembly of men to inquire into alleged facts, and bound by oath to a faithful discharge of their duty, is mostly deemed one of the most ancient and salutary institutions which has descended from a remote period, for the preservation of the persons and properties of the people. By 6 G. 4, c. 50, several abuses which had crept into the jury system were removed, and the institution placed on such a basis as better to ensure the fair and independent discharge of its judicial functions. In the course of the chapter we shall incorporate the provisions of this statute, and a subsequent amending one, as well as retain the customs and practices not affected by the acts, and thereby exhibit the present state and constitution of juries.

JURY LISTS.

According to the Jury Act, the churchwardens and overseers of the poor are required to make out an alphabetical list, before the 1st of September in each year, of all men residing in their respective parishes and townships qualified to serve on juries, setting forth at length their Christian and surname, the place of abode, title, profession or business, and the nature of the qualification of each individual.

Copies of these lists, on the first three Sundays in September, are to be fixed on the principal door of every church, chapel, and other public place of religious worship, with a notice subjoined that all appeals will be heard at the petty sessions, to be held within the last seven days of September in each year, mentioning the day and place of holding such session.

For the purpose of correcting and completing the jury lists, the churchwardens and overseers may, between the 1st of July and the 1st of October, by application to any collector or assessor of taxes or other officer, inspect any duplicate or assessment, and thereby take the name of jurors.

The list so prepared is to be kept by the clerk of the peace, and to be copied into a book, which is to be delivered to the sheriff and to be called "The Jurors' Book." This book, which is to be used for one year, commencing the 1st of January, every sheriff is to deliver to his successor in office; and from it the sheriffs, coroners and other officers are to select the jurors.

Penalties are imposed on any of the officers neglecting or refusing to discharge their respective duties in the formation of the *lists.*

QUALIFICATION OF JURORS.

the exceptions hereafter specified, the following persons qualified to serve on juries, for the trial of all issues, civil minal, in the queen's courts at Westminster, and at the ual on grand and petty juries in the courts and sessions peace, in the county, riding, or division where they re- y reside.

ery man between the age of twenty-one and sixty years, re- England, having, in his own name, or in trust for him, £10 m of clear yearly income, arising from lands and tenements, freehold, copyhold, customary tenure, or ancient demesne; issuing thereout in fee simple, fee tail, either for his own person's life; or such income or rents jointly issuing, g together to the clear yearly value of £10.

ery man having £20 a year clear, from lands or tenements lease, for twenty-one years or upwards, or for any term able on any life or lives.

useholders assessed to the poor-rate, or to the inhabited ty, in the county of Middlesex on a value of £30; in any inty £20.

s residing in Wales are eligible to serve on juries who are to the extent of *three-fifths* of any of the foregoing quali-

llowing are exempt from serving on all juries and inquests ::—Peers, judges of the superior courts, sergeants, bar- nd advocates actually practising; attorneys, solicitors, tors actually practising and taking out their certificates; , gaolers, and keepers of houses of correction; clergymen rders, Roman Catholic priests, having taken the oath re- y law; dissenting ministers, whose places of worship are d, and who follow no secular occupation except that of ster; police magistrates and commissioners of the metro- ficers of the army and navy on full pay; physicians, , and apothecaries duly licensed and actually practising; of the royal household; pilots licensed, and masters in or light service; officers in the customs, post-office (10 99), and excise; officers of courts of justice actually ex- the duties of their offices; sheriffs' officers, high constables, ch clerks.

ese must now be added (under 25 & 26 V. c. 107) all l pharmaceutical chemists, the managing clerks to attor- licitors, and proctors, actually practising, and all subor- ficers in gaols and houses of correction.

also determined in the session of 1826, that members louse of Commons are privileged from serving on juries ending their duties in parliament, *Parl. Paper*, No. 71. an, not being a natural-born subject, is qualified to serve

on juries or inquests, except in the case of the trial of aliens; nor any person convicted of any infamous crime, unless he have obtained a free pardon; nor any man under sentence of outlawry or excommunication.

No justice shall serve on any jury at the sessions for the jurisdiction of which he is a justice.

After serving, and obtaining the sheriff's certificate, persons are free from again serving on juries for certain periods; in the counties palatine, or the principality of Wales, or in Hereford, Cambridge, Huntingdon, or Rutland, for *one* year; in the county of York, for *four* years; in any other county, except Middlesex, two years. Sheriffs are required to register the service of jurors at the assizes, and to give certificates of services, on payment of one shilling; but this regulation does not extend to grand or special jurymen.

No one is qualified to serve on a sheriff's or coroner's inquest upon a *writ of inquiry*, who is not qualified to serve on a *nisi prius* jury; but this does not extend to inquests taken *ex officio*, nor to any city, borough, liberty, or town corporate, in which the usual method must be observed.

SUMMONING OF JURORS.

The summons of every common juror must be at least ten days before he has to attend, and of every special juror, three days before he has to attend; but this does not extend to the city of London nor the county of Middlesex.

The *panel*, which is an oblong piece of parchment, must, for the trial of causes, contain the names, alphabetically arranged, with the places of abode, and additions of a competent number of jurors; which number of jurors, in any court, must not be less than forty-eight, nor more than seventy-two, unless by the direction of the judges, who are empowered to direct a greater or less number.

Judges may direct the sheriff to summon not more than [illegible] jurors to attend the assizes on their respective circuits, to serve indiscriminately on civil and criminal trials; which jurors are to be divided into two sets, one of which is to attend at the beginning, the other at the end of the assizes; the sheriff informs each juror, in his summons, to which set he belongs, and at what time his attendance will be required. Jurors not attending, without reasonable excuse, when summoned, may be fined by the court.

A copy of the panel is to be kept in the sheriff's office, for the inspection of the parties and their attorneys, who are entitled to inspect the same without fee or reward.

The names of the jurors summoned, being written on [illegible] *are put* into a box, and, when each cause is called, twelve of the *persons whose* names are first drawn are sworn on the jury, unless

sd, or excused, or unless a previous *view* of the shall have been thought necessary by the court; ons who have had the view shall be sworn prior to

ay be summoned by post, and any fine imposed on adequate cause shown by affidavit within six

juror is "well and truly to try the issue between a true verdict give, according to the evidence." nay try several issues, unless objected to by the f the parties; in that case, a fresh jury is drawn m the remaining names on the panel.

CHALLENGE OF JURORS.

' names being called, they may be challenged or ie parties, as improper persons to form the jury. two kinds; challenge to the *array*, and challenges

he *array* is an exception at once to the whole y be on the ground of partiality, or default in the puty, who arrayed the panel. Or the array may cause one of the parties is an alien, so entitled to f foreigners.

the *poll* are exceptions to particular individuals, on several accounts. 1. That a juror is an alien. duly qualified according to the statute. 3. That arbitrator in the cause, has received money for i related to or employed by one of the parties. famous or degraded in law. 5. Challenges may *favour*, as where the party has no direct cause of bjects only to some suspicious circumstances, as he like, the validity of which must be determined indifferent persons chosen by the court, whose le on the impartiality of the juror objected to. ror may challenge himself, on the ground of his sion, or some other of the causes of exemption d.

eason or felony, a jury may be challenged by the assigning any cause, which is called a *peremptory* s an indulgence granted the accused in tenderness impressions and unaccountable prejudices which to conceive on the bare look and gesture of a such capricious and undefined ground of objection limit must be assigned. This is settled by the irty-five, that is, one under the number of three by the Jury Act, no person arraigned for murder s admitted to any peremptory challenge above the

number of *twenty;* but, in cases of treason, the prisoner i allowed thirty-five peremptory challenges.

If, by means of challenge, or other cause, a sufficient num unexceptional jurors do not appear at the trial, either part pray *tales;* in that case the sheriff adds to the name on the such proper persons as are present in court, or may be first f and the persons so added are subject to the same challenges principal jurors.

SPECIAL JURIES.

Special juries were originally introduced in trials at law, the causes were of too great nicety for the adjudication of ord freeholders; or where the sheriff was suspected of parti though not on such valid ground as to warrant an except him. Either party is entitled, upon motion in court, to h special jury in the trial of any cause, whether civil or crimi any penal statute, excepting only indictments for treason felony; the party demanding the special jury paying the fees and expense, unless the judge certifies on the record th cause required such special jury.

By the Jury Act, every man described in the jurors' book esquire, or person of high degree, or as a banker or merch qualified to serve on special juries; and the sheriff is bo enter all such persons, in alphabetical order, in a separat subjoined to the jurors' book, to be called "The Special J List;" and shall prefix to every name its proper number in a arithmetical series, which numbers, marked on tickets, sh put in a box.

When a special jury is awarded, the parties, with their neys, if they choose to attend, shall wait on the proper who, having shaken the numbers in the box together, shal out forty-eight of the numbers, one after another, referrin number as drawn to the corresponding number in the Jurors' List, and reading aloud the name designated b number. If either party, or his attorney, object to the drawn as incapacitated, and prove the same to the satisfac the officer, the name is set aside, and another number draw so on till the number forty-eight is completed. But, if the eight names cannot be obtained from the Special Jurors' Li officer shall fairly and indifferently take such a number of from the Common Jurors' List as will make up the full n forty-eight. The officer then furnishes a list of the names, of abode, and additions of jurors, to each party, who respe strike off twelve, and the remaining twenty-four are returne the panel.

If any of the special jurors are absent on the trial, th ..., *to complete* the number, must be taken from the c

jury panel. No tales can be prayed where all the special jurors are absent.

The old method of nominating a special jury may be followed by the mutual consent of the parties.

Special jurors may receive such a sum of money as the judge shall think reasonable, not exceeding *one guinea*, except in causes where a *view* is directed. All fees heretofore taken are continued by the Jury Act.

A rule for a special jury must be served sufficiently early to enable the opposite party to strike the jury before the day of trial; and, therefore, when the rule was served at six o'clock the evening preceding the day fixed for the trial, it was held the case was not properly tried by a common jury, *Gunn* v. *Honeyman*, 2 N. & M. 400.

The same special jury, by consent of parties, may try any number of causes; but the court may, on application from any man who has served, discharge him from serving upon any other special jury during the same assize or session.

By 15 & 16 V. c. 76, the precept by the judges of assize to the sheriff shall direct him to summon jurors both for civil and criminal trials. Special jurors, not exceeding forty-eight in number, are to be summoned to try all special jury causes at assizes; parties on notice to be entitled to have causes tried by special jury in any county except London or Middlesex, in which places special juries are to be nominated and struck as at present on obtaining a rule.

LONDON AND MIDDLESEX JURIES.

In London and Westminster, every householder, or occupier of shop, warehouse, counting-house, chambers, or office for the purpose of trade, having lands, tenements, or personal estate of the value of £100, is qualified to serve on juries.

The list of qualified persons, resident in each ward of the city of London, must be made out, with the proper quality or addition, and the place of abode of each man, by the parties hitherto accustomed to make out such lists; the shop, warehouse, counting-house, chambers, or office of each person so qualified, to be deemed the place of abode for the purpose of the act.

Lord Tenterden decided, provided a person's family is domiciled in the city, though he is not in trade, but holds a public office, nor householder, occupying only a part of a house, he is qualified to serve on a special jury in London, *K. B., Guildhall, Jan.* 9, 1827.

Six days are allowed between summons and appearance in London and Middlesex.

The sheriff of the city of London cannot return any juror to serve in the courts at Westminster.

Persons summoned to serve on juries in any of the inferior

courts of record in London, or in any other liberty, city, borough, or town, not attending, shall forfeit not more than 40*s.* nor less than 20*s.*, unless the court be satisfied with the cause of absence. Such fine is leviable by distress and sale.

No cause can be tried by a special jury in London or Middlesex, unless the rule for such special jury be served, and the cause marked in the marshal's book, as a special jury cause, on or before the day preceding the adjournment day, in Middlesex or London respectively, *Reg. Gen. H. T.* 44.

In the Common Pleas the rule must be served, and the cause marked in the marshal's book, two days preceding the adjournment day, 4 *Taunton*, 601.

No person is liable to serve on juries at any session of *nisi prius* or gaol delivery in Middlesex, who has the sheriff's certificate of service at either of such sessions, for either of the two terms or vacations next preceding.

DUTIES OF JURORS.

After a juror is sworn, he must not go from the box till the evidence is given, for any cause whatever, without leave of the court; and, with leave, he must have a keeper with him.

If, after the jury have withdrawn from the box to consider their verdict, they have meat, drink, fire, or candle, without consent of the court, and before verdict, they are liable to be fined; and if on the charge of him for whom they afterwards find, it will set aside the verdict; also, if they speak with either of the parties or their agents, after they retire from the box; or if, to prevent disputes, they cast lots for whom they shall find, the verdict will be set aside and the jury are liable to be fined.

When the jury have left the box, no new evidence can be adduced, nor can they recall a witness and make him repeat the evidence; for though he give no more evidence than he had given in court, the verdict will not be allowed, *Cro. Eliz.* 182. But they may have a witness recalled to repeat his evidence in open court.

The jury cannot retire with any writing not given in evidence in open court.

The jury are allowed to judge of the meaning of mercantile *phrases* in the letters of merchants, 7 *Taunt.* 164.

If, after the charge and evidence given on a capital offence, one of the jurors become suddenly ill, the court may discharge the jury and charge a fresh one with the prisoner, and convict him, 4 *Taunton*, 309.

When a *criminal* trial runs to such a length as it cannot be concluded in one day, the court, by its own authority, may adjourn *till the* next morning; but the jury must be somewhere kept *together*, that they may have no communication but with

ciber, 6 *T. R.* 527. In treason or felony the jury is usually permitted to retire in custody of the sheriff and his officers, who are sworn to keep them together, and not to speak to them on matters relating to the pending trial. In misdemeanours the jurors may be allowed to go home on engaging not to allow themselves to be spoken to on the subject of the trial. In *civil* cases, too, a jury may separate; but after the judge has summed up they cannot, 2 *Bar.* & *Ald.* 462. The judge has power to discharge a jury who cannot agree in a civil or criminal case, and in a criminal case may discharge the jury when a material witness is absent.

A verdict may be either *general* or *special*. A *general* verdict is absolute and without reserve, both as to the question of law and fact, either for the plaintiff or defendant. A *special* verdict simply specifies the facts as they find them to be proved, reserving the question of law for the adjudication of the court. A special verdict may be found, both in civil and criminal cases. The minutes of a special verdict must be approved by the judge, and ought to be signed by one of the counsel of each party.

JURIES IN SCOTLAND.

An experiment has been made in Scotland of allowing a verdict to be given by juries, though not unanimous. By 17 & 18 V. c. 35, if upon the trial of any civil cause the jury is unable to agree, and if after six hours' deliberation nine of the jury agree, the verdict of such nine may be taken. Pending deliberation, the jury, with leave of the judge, may be furnished with necessary refreshment.

JURY OF MATRONS.

If a woman be under sentence of death and allege pregnancy, a jury of matrons may be appointed to ascertain the fact (see Criminal Procedure).

CHAPTER VI.

Evidence.

The word "evidence," as commonly used in our law books, is applied to that which generates proof, and has been well defined as "any matter of fact the effect, tendency, or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact." (Best on Evidence.) It is in writing, or it is given by testimony of witnesses. Written proofs consist of records, ancient deeds, and wills thirty years old, which prove themselves; but modern deeds and other writings must be attested and verified by the parol testimony of witnesses.

One general rule in all trials *is that the best evidence the nature* of the case will *admit of shall always be required, if possible* to be

had, but, if not possible, then the next best evidence th
had shall be procured: for, if it be found that there is
evidence existing than that produced, the not producing
a presumption that it would have disclosed some falseho
concealed.

Thus, in order to prove a lease for years, nothing
admitted but the deed of lease itself; but if that be
proved to be destroyed or lost, then an attested copy m
duced, or parol evidence be given of its contents. So m
of a discourse with another will be admitted, but the par
must be brought forward: yet in some cases the court all
say evidence to be adduced, as in proof of any general
tradition, or of what deceased persons have declared in
time. But the bare recital of a fact, that is, the mere
tion or written entry, by an individual, that a particul
true, cannot be received in evidence by way of hears
objection does not apply to any public documents ma
lawful authority, such as gazettes, proclamations, public
records, and other memorials of a similar description.

Letters of individuals are evidence *against* the writer
for them. Private memoranda made by a person dec
admissible evidence. So are the books of a steward or
evidence against himself and his estate after his death.
in family Bibles, Prayer, or other books, by parents or
families, are good evidence of the facts recorded. A *receipt* i
conclusive evidence against the party signing it, but he
that he did not receive the sum or thing mentioned there
receipts in full, when obtained without fraud or collusion,
clusive against the party signing them.

Tradesmen's books are not admissible evidence in favo
owner, nor against a customer, unless accompanied with
delivery of goods or other corroborative particular; but
who made the entry may have recourse to them to re
memory; and if the servant who was accustomed to mal
be dead, and his handwriting be proved, the book may b
evidence: for as tradesmen are often under the necessity
credit without any note or writing, this therefore, whe
panied with such other collateral proof of fairness and re
is the best evidence that can then be procured. But as ev
this kind would be much too hard upon the buyer at any
tance of time, the law confines this sort of proof to such
tions as have happened within *one year* before the action
unless in transactions between merchant and merchant, in
course of trade.

The law, until recently, did not allow two writings to
pared even by the jury except under certain special circun
but it is now enacted by 17 & 18 V. c. 125, s. 27, in c
by 28 & 29 V. c. 18, s. 8, in criminal cases, that the co

ed writing with any writing proved to the satisfaction of to be genuine shall be permitted to be made by witnesses, such writing, and the evidence of witnesses respecting the r be submitted to the court and jury as evidence of the ss or otherwise of the writing in dispute.

ROUGHAM'S ACT.—An act of 1851 (14 & 15 V. c. 99), by 16 & 17 V. c. 83, and 32 & 33 V. c. 68, important changes both in relation to the compelling ted persons to give evidence, and the admission and of documents. 14 & 15 V. c. 99, ss. 2 & 3, enacts On the trial of any issue joined, or of any matter or n on any injury arising on any suit, action, or proceed- court of justice, or before *any person having by law* or of parties authority to hear, receive, and examine he parties thereto, and the persons in whose behalf any action, or other proceeding may be brought or defended, mpetent and compellable to give evidence, either *viva* deposition, according to the practice of the court, on either or any of the parties to the said suit, action, or eeding." s. 2. "But nothing herein contained shall person who in any criminal proceeding is charged with sion of any indictable offence, or any offence punishable y conviction, competent or compellable to give evidence nst himself or herself, or shall render any person com answer any question tending to criminate himself." common law courts are authorized to compel inspection ts whenever equity would grant discovery. Foreign and s of state, judgments, decrees, orders, and other judicial s, provable by certified copies, without proof or seal, or judicial character of person signing the same. Cer- the qualification of an apothecary admissible without he seal of the Apothecaries' Company. Documents in England without proof of the seal or signature ting the same, or of the judicial or official character of appearing to have signed the same, equally admissible or *vice versâ* Like co-admissibility extended by s. 11 onies. Registers of British vessels and certificates of lmissible as *primâ facie* evidence of their contents, oof of signature. Where necessary to prove conviction of any person charged, not necessary to produce record, be certified under hand of clerk of court. Examined copies of documents admissible in evidence. Certifying ument is a misdemeanour, punishable by imprisonment m not exceeding eighteen months. Every court, judge, cer, commissioner, arbitrator, or other person, now or aving by law or consent of parties authority to hear and ridence, may administer an oath to all such witnesses as called before them.

The 16 & 17 V. c. 83 extends the Evidence Act, by render the husbands and wives of parties to any judicial issue or inqu admissible witnesses, competent and compellable to give evide on behalf of either or any of the parties to the suit. But by no husband is competent or compellable to give evidence fo against his wife, or the wife for or against her husband, in *criminal proceeding*, or in case of adultery. No husband is c pellable to disclose any communication made to him by his during the marriage, nor any wife to disclose any communica made to her by her husband during the marriage, s. 3; 32 & V. c. 68 further removes restrictions on the admissibility witnesses. By sec. 2, parties in action for breach of promis marriage are competent to give evidence, but no plaintiff in a action can recover a verdict unless the testimony of such plai be corroborated by some other material evidence in support of promise; and by sec. 3 the parties to any proceeding instituted consequence of adultery, and the husbands and wives of parties, can give evidence, but no witness, whether the party to suit or no, is bound to answer any question tending to show such witness has been guilty of adultery unless such witness already given evidence in the same proceedings in disproof of alleged adultery of such witness.

A second description of evidence is that by witnesses. witnesses of whatever religion or country (and since 1843, whe they be felons, or interested or not), that have the use of t reason, are competent, though the jury, from after circumstan will judge of their credibility.

Until lately the evidence of witnesses had to be given upon except in a few cases, and, therefore, atheists were incompe to give evidence, but by 32 & 33 V. c. 48 it was enacted that:—

> "If any person called to give evidence in any cour justice, whether in a civil or criminal proceeding, s object to take an oath, or shall be objected to as inc petent to take an oath, such person shall, if the presi judge is satisfied that the taking of an oath would hav binding effect on his conscience, make the following pro and declaration:
>
> "I solemnly promise and declare that the evidence g by me to the court shall be the truth, the whole truth, nothing but the truth.
>
> "And any person who, having made such promise declaration, shall wilfully and corruptly give false evid shall be liable to be indicted, tried, and convicted perjury, as if he had taken an oath."

It is a principle of law that no man shall be examined to p *his own infamy*, but a witness may be examined with regard t

own infamy, when the answer cannot subject him to future punishment, but no man is bound to answer any question which may tend to criminate himself.

It is enacted by the Common Law Procedure Act, 1854 (17 & 18 V. c. 125), that a witness in any cause may be questioned as to whether he has been convicted of any felony or misdemeanour, and upon being so questioned, if he either denies the fact, or refuses to answer, the opposite party may prove such conviction by certificate of the indictment and conviction of the offence.

No counsel, attorney, or other person entrusted with the secrets of the cause by the party shall be compelled to give evidence of such conversation, or matter of privacy, as came to his knowledge by virtue of such trust and confidence: but he may be examined as to mere matter of fact, as the execution of a deed or the like, which may have come to his knowledge without his necessarily having been entrusted in the cause.

One credible witness is sufficient evidence to a jury of any single fact: though the concurrence of two or more corroborate the proof. But the law considers that there are many transactions to which only one person is privy, and therefore requires the testimony of no more.

But in cases of high treason, and some other offences against the crown, *two lawful witnesses* are required to convict a prisoner, unless he shall willingly confess the same in open court.

In criminal prosecutions, the injured parties, or prosecutors, are witnesses, because the prosecution is at the suit of the crown, in defence of its subjects.

A witness is not permitted to read his evidence, but he may refer to memoranda made by himself at the time the fact occurred, to refresh his memory.

To endeavour to dissuade a witness from giving evidence is punishable by fine and imprisonment.

By 7 G. 4, c. 64, all persons appearing upon recognizance or subpœna, to give evidence in prosecutions for felony, either before the examining magistrate, the grand jury, or on the trial, are entitled to their expenses and compensation for loss of time, and this although no bill of indictment be preferred. The same provision extends to cases of misdemeanour, with the exception that no allowance is made for attending the examining magistrate.

When subpœnaed, witnesses must appear at the trial, on the pain of forfeiting £100 to the queen, and £10 to the party aggrieved, with damages equivalent to the loss sustained by their absence from court; but no witness in civil cases is bound to attend except his expenses are first tendered to him, unless he reside within the bills of mortality, and is summoned to give evidence within the same.

The scale of remuneration of witnesses in the Admiralty and Prize courts are, for some unaccountable reason, different from

that in the superior courts of common law, in which the scale is as follows:—

DAILY ALLOWANCES TO WITNESSES AS APPROVED BY THE JUDGES

	If resident in the town in which the cause is tried.	If resident at a distance from the place of trial.
	£ s. d.	£ s. d.
Common witnesses, such as labourers, journeymen, &c.	0 5 0	0 5 0 to 0 7 6
Master tradesmen, yeomen and farmers	0 7 6 to 0 10 0	0 10 0 to 0 15 0
Auctioneers and accountants	0 10 6 to 1 1 0	0 10 6 to 1 1 0
Professional men	1 1 0	—
Professional men, inclusive of all, except travelling expenses	—	2 2 0 to 3 3 0
Attorneys' or other clerks	0 10 6	0 15 0 to 1 1 0
Engineers and surveyors	1 1 0	1 1 0 to 3 3 0
Notaries	1 1 0	1 1 0
Gentlemen, esquires, bankers, merchants	With subpœna but no daily allowance after the first day, and then a reasonable sum for refreshment and conveyance.	1 1 0
Females, according to station in life	0 5 0 to 0 10 0	0 5 0 to 1 0 0
Police inspector	0 5 0	0 7 6 to 0 10 0
Police constable	0 3 0	0 5 0 to 0 7 6

nesses attend in one cause only, they will be entitled to allowance; if they attend in more than one cause, they itled to a proportionate part in each cause only. The expenses of witnesses shall be allowed according to the nably and actually paid, but not to exceed 1s. per mile

ale of allowances to witnesses in county courts is as fol-ay:—

	£	s.	d.	£	s.	d.
n, merchants, bankers, and pro-l men - - - from	0	10	0 to	1	0	0
n, auctioneers, accountants, and yeomen - - from	0	5	0 to	0	10	0
and journeymen - - from	0	3	0 to	0	5	0
and the like - - from	0	2	0 to	0	3	0

ing expenses, sum reasonably paid, but not more than ile one way.

witnesses attend in more than one cause, they will be o a proportionate part in each cause only.

lge can, at any time during a trial, order the witnesses ides, excepting the one under examination, to withdraw, rder is rarely withheld upon the motion of either party. ess remains in court after such order, he is liable to be d for contempt, and until lately it was considered that might, at his discretion, exclude his testimony; but it tled that the judge has on this account no right to reject ss except in revenue cases in the Exchequer, where it be in the power of the judge to do so (see *Chandler* v. *M. & Rob.* 423, and *Parker* v. *McWilliam*, 6 *Bing.* 683).

dence is to be given in open court, in the presence of the heir attorneys, the counsel, the spectators, and before and jury; each party being at liberty to except to its lity, which exceptions are publicly stated and openly r not by the judge.

portant statute, 17 & 18 V. c. 34, enables the courts of ngland, Ireland, and Scotland to issue process to compel dance of witnesses *out of their jurisdiction*, and to give the service of such process in any part of the United

By s. 1, if, in any action or suit pending in any of ior courts of common law in the United Kingdom, it the court, or, if the court is not sitting, to any judge rt, that it is proper to compel the personal attendance ss, a writ in special form may be issued. Statement to t the foot of the writ that it is issued by special order of or judge. Witnesses not appearing to be punished by of the county in which the process has been served me manner as in disobedience to a writ of subpœna.

But witnesses not liable to punishment if i
money has not been tendered to pay expenses, a

EVIDENCE ON CRIMINAL TRIALS.—By an act c
c. 18, the law of evidence and practice on tri
misdemeanour is more nearly assimilated to th
prius. By s. 2, if any defendant be defende
presiding judge, at the close of the case for the pr
the counsel for the defendant whether he int
dence, and in the event of none being adduced,
prosecution be allowed to address the jury a seco
of his case, for the purpose of summing up th
defendant. Subsequent sections apply to all c
and parties authorized. By s. 3, a party p
allowed to impeach his credit by general evidenc
but he may, in case the witness, in the opi
prove adverse, contradict him by other evider
the judge, prove that he has made at other
inconsistent with his present testimony; but
mentioned proof can be given, the circumstanc
statement, sufficient to designate the particula
mentioned to the witness, and he must be ask
he has made such statement. If a witness, u
tion as to a former statement made by him relat
matter of the proceeding, and inconsistent
testimony, does not distinctly admit that h
statement, proof may be given that he did in
before such proof can be given, the circumstanc
statement, sufficient to designate the particular
mentioned to the witness, and he must be as
he has made such statement, s. 4. Witne
examined as to previous statements made b
relative to the subject-matter of the proceed
writing being shown to him; but if it is inte
such witness by the writing, his attention
contradictory proof can be given, be called to
writing which are to be used for the purpose
him. The judge at any time during the tri
production of the writing for his inspection. I
conviction of witness may be given. The word
act construed to apply to attorneys in all ca
are allowed by law or by the practice of any
advocates, s. 9.

EVIDENCE BEFORE FOREIGN TRIBUNALS.—By
facilities are provided for taking evidence in h
nions in relation to civil and commercial matt
foreign tribunals. By ss. 1 & 6, when upo
superior court or judge of Westminster, Edi
or any superior court in her Majesty s colo

it appears that a tribunal of competent jurisdiction in a country, before which a civil or commercial matter is pend- lesirous of obtaining the testimony of a witness within liction of the courts mentioned of the United Kingdom, t or judge may order an examination upon oath, upon tories or otherwise, before any person named in such a witness, and the order may direct the attendance of nd the production of any document or writing bearing on r in issue abroad. Certificate of foreign ambassador or r agent sufficient evidence in support of the application. ions to be taken upon oath, and giving false evidence Witnesses entitled to payment of expenses and loss of t a trial, ss. 2-4. A like protection to witnesses, as against self-crimination by evidence or production of s. 5. Lord Chancellor, assisted by two judges of the w courts, to frame rules regulating proceedings under

ing suits before any tribunal in her Majesty's dominions, s. 20 provides that on application to any court or judge may issue for the examination of witnesses, or the pro- any document or writing out of its jurisdiction, in any suit. False evidence under any order, commission, is perjury. All who attend under the order entitled penses. A person not bound to answer questions which inate himself, nor to produce any document that he be compellable to produce at a trial of the cause. By uperior courts at Westminster and Dublin, the court of Scotland, and the supreme court in any colony or pos- her Majesty, have authority under the act.

CHAPTER VII.

The Supreme Court of Judicature Act.

ts have from time to time been made in Parliament to system of administering justice in England and to e law and equity, but until the late session of 1873 pts have not been attended with success. The present ellor, Lord Selborne, at the commencement of the last troduced into the House of Lords a bill having for its e constitution of a supreme court of justice, and the the appellate division of the supreme court of the of the judicial committee of the Privy Council, and s become law. The act, however, does not come into

operation until the 2nd of November, 1874, and therefore t
foregoing account of the system of procedure hitherto made use
has been inserted in the present edition, and it is intended
insert here an abstract of the very important act passed, as
have just stated above, at the instance of Lord Selborne last sessi

The act is divided into seven parts, and is subdivided into e
hundred sections. The first part relates to the constitution and t
judges of the supreme court. The high court of Chancery
England, the court of Queen's Bench, the court of Common Ple
the court of Exchequer, the court of Admiralty, the court
Probate, the court for Divorce and Matrimonial Causes, and t
London court of Bankruptcy, are to be united and consolidat
together, and, subject to the provisions of the act, to constitu
one supreme court of judicature in England, of which there s
to be two permanent divisions—one of which, under the name
"Her Majesty's High Court of Justice," to exercise origi
jurisdiction as set forth in the act; and the other to be cal
"Her Majesty's Court of Appeal," and to exercise the pow
conferred as may be incident to the determination of any appe
The High Court of Justice is to consist of (as the first judges) t
lord chancellor, the lord chief justice of England, the master
the Rolls, the lord chief justice of the Common Pleas, the l
chief baron of the Exchequer, the several vice-chancellors, t
judge of the Probate court, and of the court for Divorce a
Matrimonial Causes, the several puisne judges, and judge of t
court of Admiralty, except such of those judges who shall
appointed ordinary judges of the court of Appeal.

Whenever the office of a judge of the high court becomes vacan
a new judge may be appointed by her Majesty, by letters pate
All persons to be appointed to fill the places of the lord ch
justice of England, the master of the Rolls, the lord chief just
of the Common Pleas, and the lord chief baron, and their success
respectively, are to continue to be appointed to the same offic
with the same precedence, and by the same titles, and in the sa
manner, respectively, as before. Every judge appointed to fill t
place of any other judge is to be styled in his appointment, "Ju
of Her Majesty's High Court of Justice," and is to be appoin
in the same manner in which the puisne justices and junior ba
of the superior courts of common law have been hitherto appoint
But if at the commencement of this act the number of puisne j
tices and junior barons who become judges exceed twelve, no n
judge is to be appointed in the place of any such puisne justice
junior baron who shall die or resign while such whole number o
exceed twelve, it being intended that the permanent number
judges of the said high court is not to exceed twenty-one.

All the judges are to have in all respects, save as in this ac
otherwise expressly provided, equal power, authority, and jur
diction; and are to be addressed in the manner which is

tomary in addressing the judges of the superior courts of mmon law.

The lord chief justice of England for the time being is to be sident of the high court of justice in the absence of the lord ncellor.

The "Court of Appeal" is to be constituted of five *ex officio* dges, and also so many ordinary judges (not exceeding nine at y one time) as her Majesty shall appoint. The *ex officio* judges be the lord chancellor, the lord chief justice of England, the ster of the Rolls, the lord chief justice of the Common Pleas, d the lord chief baron. The first ordinary judges of the court be the existing lords justices of appeal in chancery, the existing ired judges of the judicial committee, and such three other ons as her Majesty may be pleased to appoint by letters ent. Such appointment may be made either within one month re or at any time after the day appointed for the commence- nt of this act; but if made before, shall take effect at the mencement of the act. Besides the *ex officio* judges and the inary judges, her Majesty may appoint as additional judges of court of appeal, any persons who, having held in England the e of a judge of the superior courts of Westminster hereby ted and consolidated, or of her Majesty's supreme court eby constituted, or in Scotland the office of lord justice general lord justice clerk, or in Ireland the office of lord chancellor or l justice of appeal, or in India the office of chief justice of the h court of judicature at Fort William in Bengal, or Madras, or mbay, signity in writing their willingness to serve. The judges the court of appeal are to be styled lords justices of appeal, and to have equal power, authority, and jurisdiction, except as erwise expressly provided in the act. The lord chancellor is be the president of the court of appeal. Any new judge to be ointed must be of ten years' standing, and on his appointment l not be made a serjeant-at-law.

lo judge can be elected to serve in the House of Commons, and y judge but the lord chancellor must take the oath of allegiance also the judicial oath as defined by "The Promissory Oaths 1868." The oaths to be taken by the lord chancellor are to inue the same as before.

he rights and obligations of existing judges are to remain ltered by the act; and no judge appointed before the passing he act is to be required to go on circuit unless he was liable ustomed to do so at the commencement of the act. Subject he rights of existing judges, the following salaries are to be , including in each case any pension granted in respect of any ie office previously filled by him, to which the judge may be ed:

the lord chancellor, the sums hitherto payable to him;

the lord chief justice of England, the master of the Rolls,

the lord chief justice of the Common Pleas, and the lord chief baron of the Exchequer, the same annual sums which the holders of those offices respectively received before.

To each of the ordinary judges of the court of Appeal; and,

To each of the other judges of the high court of justice, the sum of five thousand pounds a year.

No salary is to be payable to any additional judge of the court of Appeal appointed under this act;

The retiring pensions of the future judges of high court of justice, and ordinary judges of court of Appeal, are in the case of the lord chief justice of England, the master of the Rolls, the chief justice of the Common Pleas, and the lord chief baron of the Exchequer, to be the same amount of pension which at present under the same circumstances be granted to the holder of the office: and in the case of any ordinary judge of the court of Appeal or any other judge of the high court of justice, to be the same amount of pension which at present might under the circumstances be granted to a puisne justice of the court of Queen's Bench.

The second part has reference to jurisdiction and law, and sets forth the business to be conferred on both courts and the transfer of pending business. By section 16, the high court of justice is made a superior court of record, and there is vested in it the jurisdiction which at the commencement of the act was vested in the courts of Chancery and Common Law, and the courts of Admiralty, Probate, and Divorce, and in the London court of Bankruptcy, and the court of Common Pleas at Lancaster, and Pleas at Durham, and also in the assize courts. By section 18, the appellate branch of the high court has transferred to it the appellate jurisdiction of the court of Appeal in Chancery, both in chancery and bankruptcy appeals, and also the jurisdiction of the court of Appeal in Chancery of the county palatine of Lancaster, and the jurisdiction of the chancellor of the duchy and county palatine of Lancaster, and of the lord warden of the Stannaries, and all jurisdiction of the court of Exchequer chamber, and the jurisdiction vested in the judicial committee of the privy council upon appeal from the court of Admiralty, or from any order in lunacy made by the lord chancellor or any other person having jurisdiction in lunacy. By the 19th section, the court of Appeal is empowered, subject to the rules and regulations contained in the act, and to the rules and orders made pursuant to the act, to hear and determine appeals from the high court of justice; and by section 20 it is declared that there shall be no appeal from the high court or court of Appeal to the House of Lords or judicial committee. The Queen is empowered by section 21 to transfer by order in council the appellate jurisdiction of the judicial committee to the *court of Appeal*.

The court of Appeal, when hearing any appeals in ecclesi-

at of the next session, and then rules can be annulled by
in council made by her Majesty in consequence of an ad-
n either house. The 22nd section deals with the transfer
g business, and provides for the giving judgment in causes
been fully heard at the time of the commencement of the
ave not been decided. The 24th section declares that in
l cause or matter commenced in the high court of justice,
equity shall be administered in the high court of justice
ourt of Appeal respectively, according to the rules laid

th section delares the rules of law in certain points which
vail in future, and declares that in questions relating to
ly and education of infants the rules of equity shall pre-
in all matters, except as in the act mentioned, in which
of equity and common law are at variance, the rules of
all prevail.
ird part of the statute relates to sittings and distribution
ss. The division of the legal year into terms is to be
l so far as relates to the administration of justice. Vaca-
y be appointed, and in London or Middlesex during vaca-
ision is to be made by rules of the court for the hearing
in London or Middlesex. There are to be "five" divisions,
ne Chancery division, the Queen's Bench division, the
Pleas division, the Exchequer division, and the Probate,
and Admiralty division. Rules of court are to provide
listribution of business, and there are to be divisional

t to rules of court any plaintiff may choose in what

before commencement of the act. Such rules are to be laid before Parliament, and may be annulled on address from either house. The rules contained in the schedule to the act are to come into immediate operation, and are to remain in force till changed by other rules after commencement of act. Criminal procedure, subject to future rules, remains unaltered. And the act is not to affect the rules of evidence, or the law relating to juries. The existing procedure of courts, when not inconsistent with the act or rules, is to continue to be made use of.

The supreme court may at any time, with the concurrence of a majority of the judges (of which the chancellor is to be one), present at any meeting held for that purpose, make and alter rules after the commencement of the act. Section 75 declares that there is to be a yearly meeting of the judges on days to be fixed by the lord chancellor, with the concurrence of the lord chief justice of England, for the purpose of considering the operation of the act and the rules in force, and acts of parliament relating to the courts are to be read as applying to courts under this act.

The fifth part relates to "Officers and Offices," the sixth to "Jurisdiction of Inferior Courts," and the seventh contains "Miscellaneous Provisions," containing an interpretation of terms used in the act. The schedule as to the rules of procedure is an important part of the new law, and will effect considerable alteration in the practice of the courts.

Every action in the high court is to be commenced by a writ of summons, which is to be endorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which is to specify the division of the high court to which it is intended that the action should be assigned.

Forms of writs and of endorsements thereon, applicable to the several ordinary causes of action, are to be prescribed by rules of court, and any costs incurred by the use of any more prolix or other forms are to be borne by the party using the same, unless the court otherwise directs.

All actions which have hitherto been commenced by writ in the superior courts of common law at Westminster, or in the court of Common Pleas at Lancaster, or in the court of Pleas at Durham, and all suits which have hitherto been commenced by bill or information in the high court of Chancery, or by a cause in rem or personam in the high court of Admiralty, or by citation or otherwise in the court of Probate, are in future to be instituted in the high court of justice by a proceeding to be called an action.

All other proceedings in and applications to the high court may, subject to rules of court, be taken and made in the same manner as they would have been taken and made in any court in which any proceeding or application of the like kind could have been taken *made* if this act had not passed.

ace of any agreement between the parties, and sub-
les of court applicable to any particular class of cases,
at the trial of any cause or at any assessment of
o be examined *viva voce* and in open court; but the
e may at any time for sufficient reason order that any
; or facts may be proved by affidavit, or that the
y witness may be read at the hearing or trial, on
s as the court or judge may think reasonable, or that
hose attendance in court ought for some sufficient
pensed with, be examined by interrogatories or other-
ommissioner or examiner; provided that where it
court or judge that the other party bonâ fide desires
of a witness for cross-examination, and that such
produced, an order may not be made authorizing
such witness to be given by affidavit.
se provisions of this act, the costs of and incident
igs in the high court are to be in the discretion of
nothing in the act contained is to deprive a trustee,
ther person, of any right to costs out of a particular
o which he would be entitled according to the rules
upon in courts of equity.
s will be published some time before the operation
November, 1874, and it will take a considerable
ie working qualities of the new law will be brought
urrent administration of law and equity.

PART III.

LAWS AFFECTING CLASSES.

next to consider the relationship with each other of
ibdivisions and classes into which society in this
ded and the various laws by which they are exclu-
which will form the subject of this part.
nmence by a short account of the laws relating to

CHAPTER I.

Education.

VERSITY. The constitution and government of this
ation was sought to be reformed in 1854 by the

17 & 18 V. c. 81. The general purport of the act is stated to enlarge the powers of making statutes and regulations f extension of the university, the abrogation of oaths, and f proving the discipline and studies of the several foundations. carrying out these objects a commission was appointed to con in force till January 1, 1858, and empowered to demand the duction of any document, account, or information relative t university, its statutes, usages, or practice; and no oath take any officer to be pleadable in bar of its authority, ss. 1-4. s. 5, the hebdomadal board is to cease, and all its power transferred to a hebdomadal council, to consist of the chanc vice-chancellor, the proctors, six heads of colleges or halls, six fessors of the university, six members of convocation of not than five years' standing; such heads of colleges or halls, profes and members of convocation to be elected by the congrega Persons elected for more than one class, to declare under w class they will sit, s. 6. The three juniors of each class in ac mical standing, reckoning from matriculation, to vacate their s at the expiration of the third year, and all the other persons ele at the expiration of the sixth year. Members eligible to be elected. If any member of council reside for less than twenty- weeks during term-time in any year, his seat to be decl vacant. Chancellor, or vice-chancellor, or his deputy, to be p dent of the council. The congregation of the university is t composed of the following twelve classes of persons: the chanc high steward, the heads of colleges and halls, the canons of Ch church, proctors, the members of the hebdomadal council, ce officers, namely, librarians, public orators, keepers of archives, the professors, assistant or deputy professors, public examiners *residents*, and lastly all persons made eligible by any statu the university, approved by the commissioners. Chancello vice-chancellor to be president of the congregation, ss. 14, By s. 18, the statutes of the hebdomadal council are to be mulgated in the congregation, and a member of the latter move amendments, which the council may adopt, alter, or re Members of congregation may speak in *English*. For one vac in the council they are to have one vote; two or three vacan two votes; four vacancies, three votes; five or six vacancies, votes; but no elector is to give more than one vote for any candidate. By s. 22, the powers of the convocation are reta University may provide that votes may be given by proxy at tion of chancellor. University oaths, binding the juror n disclose any matter or thing relative to his college, or not to co in any change in its statutes, declared to be illegal oaths.

By s. 25, power granted to vice-chancellor to license any mem of convocation to open his residence, if situate within one mile a half of Carfax, for the reception of students who shall be m *culated and admitted* to all the privileges of the university, a

mbers of any college or existing hall; such opened be called a private hall. The university is em- ake statutes before the first day of Michaelmas term, to carry into effect the objects proposed in relation halls; and by the same date the various colleges and nd statutes with respect to the eligibility to head- hips, and other college emoluments, and the tenure ure the same being conferred according to personal ness, subject to the approval of the commissioners; lege omit to make such statutes, the commissioners l to make such orders or regulations as they deem rders to be laid before the college and the visitor months before being submitted to her Majesty in if two-thirds of the governing body shall, in writing , declare that in their opinion such ordinances will to the college as a place of education, the same shall ; but the commissioners may submit other rules s for the like purposes. All ordinances and regula- y the commissioners, and objected to by the govern- e college or school to which they relate, are to be one of the secretaries of state, and laid before 33. Winchester College is to be subject to the pro- act, s. 34. By s. 38, the commissioners are to the wants and improvements of the college or hall, nt of religion and learning, the establishment of the n an enlarged basis, and the delivery of lectures ege is able to make such provisions. All statutes niversity or colleges are subject to repeal or altera- per authorities, as are also those made by the com- ersons becoming members of any college after the act not to be considered as possessing an existing the meaning of the statute. After the first day of m, 1854, no oath is to be taken or declaration made ag, nor on taking the degree of B.A.

25 & 26 V. c. 26, the vice-chancellor of the uni- ford may, with the approval of any three of the uperior courts, make rules for regulating the practice procedure in his court. By 23 & 24 V. c. 91, the ships are declared to be *university* emoluments; and is empowered to retain the custody of testamentary transmit to the Court of Probate an index of the it at the instance of the vice-chancellor.

UNIVERSITY. The reform of this foundation was model of that applied two years previously to the Oxford. The 19 & 20 V. c. 88, states it to be ex- advancement of "religion and learning" to enlarge making statutes and regulations now possessed by of Cambridge and its colleges; and to make pro-

visions for the government and extension of the same, fo abrogation of oaths, and for maintaining and improving dis and studies. For these purposes commissioners are appointed of whom are to be a quorum, and whose powers are to be *in* until January, 1859, or, if the crown think fit, one year lo Commissioners empowered to require the production of docu and accounts, and no oath taken by any officer to be a bar to authority. By s. 5, in place of the Caput Senatus, on Nove 7, 1856, a council of the senate is to be elected, to prepa graces to be offered to the senate, whether from individual me of the senate, or from syndicates, and no grace to be offered v out the sanction of a majority of the council. The coun consist of the chancellor, vice-chancellor, four heads of col four professors of the university, and eight other members o senate, to be chosen from the electoral roll; but there are not more than two members of the same college among the eight el members. The vice-chancellor, on or before October 13, 1 and also on or before the second Monday in October in every is to promulgate a list of the members of the senate who ha sided within one mile and a half of St. Mary's church for fou weeks at the least between the first day of the preceding Mic mas term and October 1st; and such list, together with all o of the university being members of the senate, the heads of h the professors, and the public examiners, to be the electoral r the university for the purposes of the act. Ss. 8 to 13 rel the vacating of seats by members, to the filling up casual vaca and the mode of electing the council. A member of counc coming vice-chancellor does not vacate; and no professor is gible by reason of any statute of his foundation. The coun meet for the despatch of business Nov. 8, 1856; the chanc vice-chancellor, or his deputy, to be a chairman, or, in the sence, the members present to choose a chairman, s. 19. members to be a quorum, and questions to be decided by a maj Oaths binding the juror not to disclose any matter pertaini his college, or to resist or not concur in any change therein, de to be illegal from the passing of the act, July 29, 1856. By power is given to the vice-chancellor, conformable to regul hereafter to be made, to *license* members of the university to their residences, if within a mile and a half of St. Mary's ch for the reception of students who may be matriculated, an mitted to all the privileges of the university. Every pers whom such license is granted to be called a principal, and h sidence so opened a hostel. Before Jan. 1, 1858, the univer proceed to frame statutes for fixing the conditions of gra licenses for the regulation of hostels, and their principals; t the university omit to frame such statutes within the period *tioned it is* made incumbent on the commissioners to frame ss. *25, 26.* Governing body of any college, or the major p

them, empowered to frame statutes of reform prior to Jan. 1, 1858. Power given to colleges to sever benefices annexed to their headship. Colleges omitting to frame reform statutes, it is made incumbent on the commissioners to do so. The council of the senate may frame new statutes, but such statutes to be submitted to the senate for their adoption or rejection; and no statute framed either by the council or colleges to have effect unless assented to by the commissioners. Commissioners may frame university statutes, but before submission for the assent of the crown, they must be submitted to the council of the senate, s. 36. Right of preference belonging to certain schools to any college emoluments not to be abolished if governors of schools or charity commissioners dissent, s. 32. Statutes framed by commissioners, if objected to by the governing bodies of the colleges or schools, to be laid before parliament. The college of Henry VI., of Eton, made subject to the act. A grace or statute of the university having, December 10, 1857, made the salaries and allowances, heretofore paid by annual parliamentary grants, payable out of the university chest, the 21 V. c. 11, abolishes the stamp duties payable on matriculation and degrees. By s. 2, such salaries and allowances not to be discontinued without consent of her Majesty's Treasury. By an act of 1858, the 21 & 22 V. c. 44, power is given with the consent of the copyhold commissioners, both to Cambridge and Oxford, and the colleges of Eton and Winchester, to sell, enfranchise, and exchange lands, under certain conditions, for the benefit of the several foundations.

By "The Universities Tests Act, 1871" (34 & 35 V. c. 26), it is enacted, that no person shall be required, upon taking, or to enable him to take, any degree (other than a degree in divinity) within the universities of Oxford, Cambridge, and Durham, or any of them, or upon exercising or to enable him to exercise any of the rights and privileges which may heretofore have been or may hereafter be exercised by graduates in the said universities or any of them, or in any college subsisting at the time of the passing of this act in any of the said universities, or upon taking or holding, or to enable him to take or hold, any office in any of the said universities or any such college as aforesaid, or upon teaching or to enable him to teach within any of the said universities or any such college as aforesaid, or upon opening or to enable him to open a private hall or hostel in any of the said universities for the reception of students, to subscribe any article or formulary of faith, or to make any declaration or take any oath respecting his religious belief or profession, or to conform to any religious observance, or to attend or abstain from attending any form of public worship, or to belong to any specified church, sect, or denomination; nor shall any person be compelled, in any of the said *universities or any* such college as aforesaid, to attend *the public worship of* any church, sect, or denomination *to which he does not belong, provided* that,—

1. Nothing in this section shall render a layman or a member of the Church of England eligible to capable of exercising any right or privilege in any of versities or colleges, which office, right, or privile authority of any act of parliament or any statute or such university or college in force at the time of this act, is restricted to persons in holy orders, or any obligation to enter into holy orders which is by attached to any such office.

2. Nothing in this section shall open any office (office mentioned in this section) to any person who is of the Church of England, where such office is, at t this act, confined to members of the said Church by such degree as aforesaid being a qualification for holdi

No person shall be required to attend any college lecture to which he, if he be of full age, or, if he age, his parent or guardian, shall object upon religio

DULWICH COLLEGE. The scheme of the Archbish bury for the government of this foundation having and modified by the Charity Commissioners, is confi out in schedule to 20 & 21 V. c. 84. Archbishop visitor. Nineteen governors to have the control of t estates from December 31, 1857. Eleven of the go appointed by the court of Chancery, and eight to seven years, two by each of the vestries of the four p Botolph without Bishopsgate, St. Saviour, Southwa Middlesex, and St. Giles, Camberwell. One of the governors to be styled the "Dulwich Governor," and dent inhabitant of Dulwich. Governors to frame ru lations. Three-fourths of net income to go to the branch of the charity, and one-fourth to eleemosynary schools to be established, an upper and a lower schoo school to be for foundation scholars and day boys. and under-masters to be graduates of the universit former £450, the latter £250. Foundation scholars school to belong to the four parishes, be elected clothed and maintained by the charity. Foundatio the lower school to be appointed by the governors, mu or in default of orphans, poor children belonging to o parishes. Schools to be subject to inspection by inspectors of schools. Remainder of scheme refers cl bitions and scholarships, to the preservation of the Bou gallery, to Whitfield's gift, and the girls' school of founder of Dulwich College.

SCIENTIFIC SOCIETIES. The 6 & 7 V. c. 36, exempts borough, parochial, and other local rates, land and b *taining to any society instituted for the purposes of s rature, and the Fine Arts exclusively, and supported*

al voluntary contributions, without making any
ms to the contributors. The rules of societies de-
tion must be transmitted to the barrister who cer-
of Friendly Societies, a fee of one guinea being paid
te. By 17 & 18 V. c. 112, greater legal facilities
procuring and settling sites and buildings in trust
established for the promotion of Literature, Science,
ts, or for the diffusion of useful knowledge. Lands
ne acre in quantity may be granted, sold, or ex-
sites of such institutions, and contingent interests
s of the duchy of Lancaster and of the duchy of
powered, upon sufficient authority, to grant sites,
s not having the legal estate empowered to convey
like purpose, without the concurrence of their
ny lay or ecclesiastical corporation. Any number
s granted for separate institutions, although the
ty of land exceed an acre, s. 10. When an insti-
porated, property of institution to vest in the
s. 20. Institutions incorporated or not may sue
name of president, chairman, secretary, or clerk,
rmined by the rules and regulations of the insti-
ember in arrear of his subscription, or holding
ng to the institution, or injuring its property, may
Institutions are enabled to extend, modify, or
rposes, but power given to the Board of Trade to
erations, if applied to by two-fifths of dissentients,
on a dissolution no member to receive a profit, but
eeds, if any, to be given to another institution.
c. 44, provision is made for the incorporation of
r societies, and a conveyance for value to trustees
se and similar societies is exempted from the law

OOLS. In 1840 an act (3 & 4 V. c. 77) was passed
e condition and extending the benefit of grammar
as all endowed schools, whether of royal or other
ded or maintained for the purpose of teaching
This act empowers the court of Chancery, when
re petition, to make decrees extending the system
, and the right of admission to any school, and
mes for the application of its revenues. The in-
founders and other matters must be considered.
may be dispensed with, where the revenues are
y 23 V. c. 11, the trustees or governors of en-
re bound to make such orders as shall (without
the religious teaching of other scholars or autho-
ious teaching other than that previously afforded)
itting to the benefits of the school the children of
nging to the church or denomination according to

the doctrines of which religious instruction is to be afford
the endowment of the school. Provided that nothing be c
in the will or deeds, regulating such endowment, expr
quiring the children to be instructed according to the fo
of such church or denomination. These two acts do not
the universities of Oxford, Cambridge, London, or Durha
the colleges of St. David's and St. Bee's, or to the gramma
of Eton, Winchester, Harrow, Charterhouse, Rugby, 1
Taylor's, St. Paul's, Christ's Hospital, Birmingham, Ma
Macclesfield, or Louth, or such schools as form part of a
dral or collegiate church, and the last act (23 V. c. 11)
apply to the national society schools, or to any institu
ported wholly or partly by voluntary subscriptions, or to
or Ireland. The Endowed Schools Act, 1869 (32 & 33 V
which does not apply to Eton, Winchester, Westminster,
house, Harrow, Rugby, and Shrewsbury, or to Scotland o
empowers the crown to appoint commissioners, not exceed
in number, who can make schemes for the application
cational endowment and as to the governing bodies there
provided that the parent or person maintaining any da
may claim by notice in writing the exemption of such sch
attending prayer or religious worship, or from any lesson
gious subject. A somewhat similar provision is made in
of boarders. The governing body are not to be disqualifi
ground of religious opinion, nor are masters required to l
orders. There are, however, exceptions to these provision
ligion (other than that relating to day scholars), the most i
of which is in the case of any school which is maintained
endowment of or forms part of the foundation of any ca
collegiate church.

SITES FOR SCHOOLS. By 4 & 5 V. c. 38, it is enacted t
lords, who have an estate in fee or in tail or an estate fo
in the latter two cases, only with the consent of the perso
remainder, if he be legally competent), being possessed of
ficial interest, may give, sell, or exchange land, not exc
acre in extent, as a site for a school to educate poor person
rights of all persons, in the case of waste or commonable
veyed for this purpose by the lord of the manor, are barr
chancellor and the council of the duchy of Lancaster, and t
(when properly authorized) of the duchy of Cornwall, may,
lar purposes, grant lands to the trustees of any existing or
school. If lands granted as above shall cease to be us
purpose of this act, they shall immediately revert. Lan
ceeding an acre in extent may also be granted for like pu
any corporation, ecclesiastical or lay, sole or aggregate, in
may be vested, subject to certain restrictions; and grant
purposes may be made to any corporation or trustee. An
of sites, not exceeding one acre each, may be granted fo

ovided that not more than one such site shall be in each (by 14 & 15 V. c. 24) in each district, in the case of hes divided into ecclesiastical districts. The provisions are extended by 15 & 16 V. c. 49, to such schools or r the sons of tradesmen, yeomen, or others, or for for holy orders, as are erected or maintained in part by aid.

OR UNDER THE POOR LAW. By 7 & 8 V. c. 101, nded by 11 & 12 V. c. 82, 13 & 14 V. c. 101, and V. c. 122), the poor-law commissioners may combine arishes into school districts for any class of infant poor, he age of sixteen years, and who are orphans or deserted arents, or whose parents consent to the placing of the the district school.

boards are to be formed for the management of schools as; members to be ratepayers with a qualification not he net annual value of £40, and chosen for three years rdians, or, if no guardians, by the overseers. Chairman f guardians to be, if he consent, *ex officio* chairman of board.

s of the district board to have generally the powers of subject to the commissioners. They may appoint paid one chaplain at least, with the consent of the bishop, stablishment. No inmate of school or asylum to be attend religious service contrary to his persuasion, or ents or relatives. Dissenting ministers may visit school at reasonable times according to regulations. Governors may visit schools to ascertain proficiency of

ay be raised for the purpose of sites and the erection or ildings for schools and asylums, but not to exceed in e-fifth of the average annual expenditure for the relief r, and must be repaid within twenty years. Guardians t and visit asylums. Children may be sent to district a parishes not included in the district.

19 V. c. 34, guardians are empowered to grant relief to oor person, relieved out of the workhouse, to provide for his children between the ages of four and sixteen in to be approved of by the guardians for such time and h conditions as they shall see fit, but education is not to ed as a condition of relief.

& 26 V. c. 43, empowers guardians to send any poor ified by Poor-law Board, and wholly or partially sup- voluntary subscriptions, and which the managers may be receive and pay the expenses incurred, if not exceeding nt that would have been charged if relieved *in the work*ring the period. *School to be open to inspection* by Board. *Only orphans eligible, or children with* parents

who consent, s. 6. No child to be sent to a school conducte
the principles of a religious denomination to which the child
not belong.

REFORMATORY AND INDUSTRIAL SCHOOLS. The laws relati
these schools were consolidated and amended in 1866 by 29
V. cc. 117 & 118. A principal Secretary of State (the
Secretary) may, upon the application of the managers of
reformatory or industrial school, direct an inspector of pri
who is styled the inspector of reformatory schools, to inquire
the condition of the school and report thereon, and may, if
fied with the report in the case of a reformatory school, c
that it is fit for the reception of youthful offenders, and in the
of an industrial school grant a certificate constituting it a cer
industrial school.

The managers of any certified reformatory or industrial s
may make rules for the management and discipline of the s
to be approved of by the Secretary of State. The punishmer
the infraction of these rules is imprisonment for not more
three months.

Any offender under sixteen years of age who is convicted
marily of an offence punishable with penal servitude or impr
ment, and who is sentenced to imprisonment for not less tha
days, may be sent, by the justices before whom he is charged,
certified reformatory school, to be there detained for not less
two or more than five years, and the justices shall, as f
possible, select a school conducted in accordance with the reli
persuasion to which the offender appears to belong.

In the case of a child under fourteen years of age, who is f
begging or wandering without a settled place of abode, or guar
or visible means of subsistence, or who is found destitute, bei
orphan, or having a surviving parent who is undergoing
servitude or imprisonment, or who associates with reputed thi
or whose parent or guardian represents him as refractory
desires that he should be sent to an industrial school, or w
represented as refractory by the union or parish guardians
workhouse or pauper school, or as the child of parents eith
whom has been convicted of a crime punishable with penal
tude or imprisonment, and in the case of a child under t
years of age who is charged with an offence punishable by impr
ment or a less punishment, but has not been convicted of fe
the justices or magistrates before whom he is brought may
him to be sent to a certified industrial school.

The parent or guardian of any offender or child sent or abo
be sent to any reformatory or industrial school, may apply to
him removed to a school conducted in accordance with his reli
persuasion.

Officers of a certified reformatory school, authorized to

apprentice to any trade.
ners of the Treasury may contribute out of public as the Secretary of State shall think fit, towards of children in industrial schools, such contribution shillings per head per week in the case of chil- the application of their parent or guardian.
other person for the time being legally liable to ler or child, detained in a reformatory or indus- e compelled, if of sufficient means, to contribute ing five shillings a week towards his mainten-

be at the same time a certified industrial and a ory school. These acts do not extend to Ireland.
r GRANTS FOR EDUCATIONAL PURPOSES. Parlia- ous times granted sums of money for these pur- £705,865 was granted for Great Britain and land. The applications of such sums have been & 8 V. c. 37, and 18 & 19 V. c. 136. In 1856 empowered, by 19 & 20 V. c. 116, to appoint the Privy Council to be vice-president of the Privy Council on education, with a salary of um to be paid out of the parliamentary grants. it is eligible for a seat in the House of Commons.
DUCATION. In 1870 an act (33 & 34 V. c. 75) er to provide for public elementary education in s. A public elementary school is defined by the at which elementary education is principally ich the ordinary payments for instruction do not holar ninepence a week. The object of the act provide and maintain sufficient schools and to

and they may, after inquiry, as in the act mentioned, disso
united school district. They can also order one school distri
contribute towards the expense of schools in other districts.
not required as a condition of admittance into any p
elementary school that any child shall attend or avoid any Su
school or place of religious worship, or that he shall attend
religious instruction in the school or elsewhere against the wi
his parents, or that he shall attend the school on any day set
for religious observance by the religious body to which his pa
belongs. Religious instruction or observance must be at a
time, either at the beginning or end of the meeting of the sc
The school must be open at all times to any of the inspe
appointed on the recommendation of the education departm
No religious catechisms or formularies distinctive of any parti
denomination are to be taught in the school. In every s
district sufficient amount of accommodation in public elemen
schools, available for all the children resident in the district (
whose efficient education is not otherwise seen to, must be
vided ; and where there is in any district an insufficient amou
such accommodation, a school board is to be formed, whose du
is to supply the deficiency, and, if they fail to supply it,
education department can do so instead. The school boar
boroughs is to be elected by the persons on the burgess roll ;
parish out of the metropolis, by the ratepayers. The manne
election is given in the act, and also the method of electing
metropolitan school board. The school boards may delegat
a body of managers any of their powers except that of ra
money, though they retain their responsibility. The s
boards may fix the amount to be paid by each child, not to ex
ninepence a week. Each child must pay something, thoug
cases of poverty the payment may be made by the school boar
a renewable period, not exceeding six months (s. 25), such
ment not to be deemed to be parochial relief ; payment also ma
remitted for six months. The school board may provide, by b
ing or otherwise, sufficient school-houses, and may also purcha
take on lease any land. Compulsory power to purchase land
be exercised, and the Lands Clauses Consolidation Act, 184
incorporated with this act. The board may contribute to,
build and maintain, if desirable, certified industrial sch
The expenses incident to the working of this act are to be paid
of one fund called the school fund, and all moneys, however ra
are to be paid into the hands of a treasurer, and form part of
school board exchequer. Fees of scholars, the parliamen
grants, and moneys raised by loan, form the school fund.
deficiency is to be made up by levying a rate (s. 54). No pa
mentary grant is to be made to any school board in respe
instruction in religious subjects, and no grant is to exceed
income of the school for that year, derived from other sou

n good health, who is not under efficient instruction in anner, and who is between the ages of five and thir- in be compelled to attend school at the time fixed in th the rules of the act, if there is a public elementary three miles of the residence of the child ; and the has power to impose a penalty for a breach of this penalty can be recovered in a summary way, but it ed with costs 5*s.* for each offence.

CHAPTER II.

The Clergy.

is a term used in contradistinction to the laity, and all persons in holy orders and ecclesiastical offices. persons are not expected to be entangled in temporal ergy enjoy peculiar privileges ; they cannot be com- e in war, on a jury, nor to appear at a court-leet or pledge : neither can they be chosen to any secular ff, bailiff, constable, or the like. They are incapable he House of Commons. In going and returning from r they are exempt from turnpike tolls.

W. 4, c. 45, empowers bishops, deans, and other persons to augment the incomes of *poor vicarages* by reservations out of rectories impropriate, and ng to them. Ecclesiastical corporations, colleges, &c., priate rectories or tithes, may annex the same to any apel within the parish in which the rectory lies, or e : but such augmentations not to be granted to any rling £300 in yearly value, or so as to raise any greater amount than £350, or £300 exclusive of

Power is also given, with consent of ordinary and ctors and vicars to charge their benefices for the chapel of ease, or district church or chapel.

c. 20, no ecclesiastical person, or master or guardian al, to grant a renewal of any lease for two or more e of the lives shall have dropped, and then only for he survivors and additional life, not exceeding three

In leases for forty years no renewal to be granted years of such leases have expired ; leases for thirty st have expired ; leases for twenty-one, seven ; and ears no renewal for life or lives. Certain leases may nformably to usual practice. Not to prevent eccle- ns effecting changes under certain conditions ; nor cts of parliament ; nor for same term as preceding

By 5 & 6 V. c. 27, incumbents are empowered, with consent of bishop and patron, to lease lands belonging to their benefices fourteen years, with a saving of covenants respecting cultivation and improvement. In certain cases leases may be granted twenty years.

By 5 & 6 V. c. 108, ecclesiastical corporations, both aggregate and sole, with some exceptions, may grant leases for long terms of years.

By 1 & 2 V. c. 106, no spiritual person shall farm above eighty acres without consent of the bishop, and then not beyond seven years, under a penalty of 40*s*. per acre. Neither can he engage in trade to buy and sell for profit or gain, but this does not extend to keeping schools or teaching; nor in respect to buying and selling in course of such educational employment; or to sell anything really bought for the use of the family; or to be a manager of any benefit, life, or insurance society; or to deal in cattle for the use of his own lands. Illegal trading subjects to suspension, and for a third offence to deprivation.

Though a clergyman is liable to penalties for trading, his contracts are valid, and he is subject to the bankrupt laws. He may be a member of a banking co-partnership, but cannot, if beneficed or doing ecclesiastical duty, be a director, 4 V. c. 14.

It has been held that *any person* may prosecute a clergyman for neglect of clerical duty; but the Church Discipline Act, 3 & 4 V. c. 86, provides that in any case of a clerk in holy orders being charged with an offence against the ecclesiastical laws, or against whom there may exist scandal or evil report, the bishop of the diocese may, on the application of any party, or if he think fit on his own mere motion, issue a commission consisting of three persons, of whom one shall be his vicar-general, an archdeacon, or rural dean, to inquire into the grounds of such charge or report. Fourteen days' notice previous to the issue of the commission must be given to the clergyman accused, and the charge against him stated.

Clergymen are in general liable to all public charges imposed by parliament, unless specially exempted; as in certain cases for the duty on horses. They are liable to the poor rate for their tithe and glebe; and if not compellable to take parish apprentices they are chargeable towards putting them out.

The clergy are divided into various ranks and degrees; as archbishops, bishops, deans, canons, and prebendaries; archdeacons, rectors, vicars, curates, and parish clerks when in orders.

An *archbishop* is the chief of the clergy in a whole province, and has the inspection of the bishops of that province, as well as the inferior clergy, and may deprive them on proper cause.

The Archbishop of Canterbury is styled the metropolitan and *primate* of all England, and enjoys by custom the privilege of *crowning the kings* and queens of the realm. He has also the pre-

ispensations in any case; to grant special licenses to ny time or place; and to exercise the right of con- he degrees which are taken in the universities; but in he graduates of the universities, by various acts of and other regulations, are entitled to many privileges d to a degree of the primate or a *Lambeth degree*.

has power and authority, besides his sacred functions, the manners of the people and clergy, and to reform clesiastical censure; for which purpose he has courts which are holden by his chancellor. It is also the the bishop to ordain, admit, and institute priests; to es for marriage, consecrate churches, and confirm, sus- communicate. Archbishops and bishops are nominally the dean and chapter, but virtually appointed by a e of the crown.

od *chapter* are the council of the bishop, to assist him dvice in affairs of religion. The chapters consisting of rebendaries, are sometimes appointed by the sovereign, by the bishop, and sometimes elected by each other. nd prebends may become void, like a bishopric, by ivation, or resignation.

'acon has an ecclesiastical jurisdiction, subordinate to through the whole of his diocese, or some part of it. ons have equal jurisdiction.

numerous class of ecclesiastical persons are *parsons* f churches. A *parson* is one that has full possession ights of a parochial church; he is sometimes called rernor of the church. During his life, he has in him- hold of the parsonage, the glebe, the tithes, and other

nction between a *parson* and a *vicar* is this: the parson the sole right to all ecclesiastical dues in his parish; ar has generally an appropriator over him, entitled to t of the profits, to whom he is, in effect, perpetual a fixed stipend. A vicar is a name that was unknown n of Henry III., before which the rector provided a maintained him on an arbitrary stipend.

od of becoming a parson or a vicar is much the same; presentation, institution, and induction, are necessary o person is eligible to any benefice unless he has first ed a priest, and then he is called a clerk in orders. can be admitted a deacon in England till he has e age of twenty-three complete, nor be admitted a e the complete age of twenty-four.

re the lowest degree in the church, being in the same vicar was formerly, an officiating temporary minister, n incumbent entitled to the tithes of the parish. By 106, s. 85, where an incumbent does not duly reside,

[illegible], or insufficiency in]

Induction is performed by mandate from sists in giving the clerk corporal possession holding the ring of the door, or tolling a be give the parishioners notice to whom the titl paid.

By the "Clerical Disabilities Act, 1870" priest or deacon in the Church of England, a may, after having resigned every preferment and enrol a deed of relinquishment in the C the form and manner prescribed in the act, copy of the enrolment to the bishop of the last held a preferment, and give notice to tl province in which such diocese is situate. Si office copy shall have been delivered to a bisho in office shall, on the application of the person cause the deed to be recorded in the registry thereupon the person executing the deed shall officiating in any manner as a minister of the and of holding any church preferment, and he and free from all disabilities, disqualification which he had been liable before as a minist England.

By 32 & 33 V. c. 111, provision is made fo bishops and bishops, when incapacitated by ag for the due performance of their episcopal du representation being made to her Majesty, tha bishop in England is desirous of [illegible]

cessor, one-third part of the income, calculated on
e three preceding years, received by the retiring
n account of his deanery or canonry; such yearly
e from day to day, but to be payable half-yearly:
f the retiring dean or canon holds no other eccle-
ent, such one-third shall, in the case of a dean
s than £400 a year, be made up to £400 a year;
of a dean in Wales, if less than £300 a year, be
); and in the case of a canon not being a minor
l, if less than £250 a year, be made up to £250 a
e case of a canon not being a minor canon in
an £175 a year, be made up to £175 a year. A
) whose office any ecclesiastical or civil preferment
, on retiring from his deanery or canonry in pur-
ct, be deemed to have vacated such preferment,
tled to receive annually a sum equal to one-third
eceived from it, calculated on an average of the
rears.

ents Resignation Act, 1871" (34 & 35 V. c. 44),
a representation being made to the bishop by the
y benefice, provided he has been the incumbent of
seven years continuously, that he desires, on the
s incapacitated by permanent mental or bodily in-
due performance of his duties, to retire from his
:he provisions of the act, it shall be lawful to
act mentioned a commission addressed to five per-
nto and report upon the expediency of the resigna-
nbent.

oners shall give seven days' notice of their first
to the usual place of public notices in the church

Three of the commissioners shall constitute a
e commissioners at a meeting of them duly con-
mine on oath, if they see fit, the persons who are
ng to be examined by them, touching any matter
object of the commissioners, and may administer
ry for that purpose, and the commissioners shall
ion as to the expediency or otherwise of the pro-
, and if they, or at the least any three of them,
tion expedient, shall specify the amount of pension
inion ought to be allowed out of the revenues of
ie retiring incumbent; provided that in no case
on exceed one-third part of the annual value of
ned.

to the commission shall certify the resignation to
d the patron shall in writing have consented, or
one calendar month thereafter in writing refuse
eto, the bishop shall proceed; but if the patron
s consent, the return to the commission shall be

laid before the archbishop of the province, who shall, wi
calendar month, give his decision in writing whether such
tion shall or shall not be accepted, which decision shall
If the patron shall have declared his consent, or have not
it as aforesaid, or if the archbishop shall decide that the
tion shall be accepted, the bishop shall cause a declarati
prepared, inserting therein the amount of pension, so allo
of the revenue of the benefice, to the retiring incumb
shall sign the same in triplicate in the presence of one wit

By 23 & 29 V. c. 68, the Ecclesiastical Commissioners
abled to grant superannuation allowances to officers, cle
other persons on the permanent establishment of the cor
who have served ten years and under eleven years, an
allowance of ten-sixtieths of the annual salary and emo
By s. 2, gratuities may be granted when officials are not
by length of service. Superannuation not to be granted
sons under 60, except upon medical certificate of perma
capacity.

An Act of 1870, the 33 & 34 V. c. 39. facilitates the
of ecclesiastical patronage in certain cases, provided it
that such transfer, in the opinion of the Ecclesiastical C
sioners, will better provide for the cure of souls in the p
district.

II. PLURALITIES, RESIDENCE, AND DIGNITIES.

In respect of plurality and residence, the 1 & 2 V. c. 1
vided that not more than two preferments should be accep
the holder of one benefice accept another, unless within t
of each other; nor if the population of one such benefice
than 3,000, or their joint yearly value exceed £1,000. Bu
yearly value of one benefice be less than £150, and the po
does not exceed 2,000, they may be held jointly, after st
of reasons by the bishop, who may require residence in th
parish for nine months in the year. A leave or dispens
hold two benefices must be obtained from the Archbi
Canterbury, after the bishop has certified. Each incumb
having a license or certificate, unless he be resident on
benefice, when such absence shall exceed three months,
six months, to forfeit one-third part of the annual value
benefice from which he absents himself; if such absence
six, but not eight months, one-half part of such annual
be forfeited; exceeding eight months, two-third parts
absent a whole year, three-fourth parts of the annual va
feited.

The provisions of this act are amended by 13 & 14
enacting that no spiritual person shall hold together
benefices, except in the case of two benefices the churches

les of one another by the nearest road, and the
e of which does not exceed £100. By s. 2, not-
provision in 1 & 2 V., it is lawful to hold two
to the provisions just mentioned of 13 & 14 V.,
the yearly value of such two benefices jointly,
to repeal any provisions of the 1 & 2 V. in re-
t of population or license of dispensation. Term
ed to mean any benefice with cure of souls.
nefice to be estimated clear of deductions for
, dues, and permanent charges, but not stipend
of cathedrals hereafter appointed, not to hold
fice of head of any college or hall in either of
Oxford or Cambridge, or be provost, warden,
ublic school. Nor are the heads of colleges,
cathedral preferment or benefice, except such
rmanent endowment of the office. Acceptation
trary to the Act renders void any previous pre-
ons by s. 8 for the union of benefices in certain
affect preferments to which persons have been
Persons already holding one benefice may hold
if appointed for next presentation previously to
ovision is also made for holding benefices with
under 4 & 5 V. c. 39.
n is not allowed to serve more than two bene-

o parsonage-house, or it is in such a state as to
ig repaired, so as to be fit for the residence of an
ise within three miles of the church, or two miles,
e licensed, and considered the legal residence.
ical Dilapidations Act, 1871" (34 & 35 V. c.
w with respect to Ecclesiastical Dilapidations.
lations are to be appointed for each diocese, who
buildings of a benefice at the request of the
dean, patron, or incumbent, and report thereon
oney to defray the cost of any works reported to
e borrowed from the governors of Queen Anne's

it shall refuse or neglect duly to execute in the
, and at or within the prescribed time or times,
airs, it shall be lawful for the bishop to raise
in the final report, if not otherwise provided by
gether with all costs incurred by the bishop in
by sequestration of the profits of the benefice.
e executed, the incumbent is protected from fur-
five years. The act contains many other provi-
to vacant benefices, fire insurance, &c.
ical Dilapidation Act, 1872," 35 & 36 V. c. 96,
l be lawful for governors, with the stipulated

consent of the bishop and patron, to alter the length o mortgage term, and the conditions of repayment of adv The governors may also, with the consent in writing under the of the mortgagor or his successor, change the day of d the annual payments, payable to them under any mo deed. It also enacts that it shall be lawful for the Archbis Canterbury, the Lord High Chancellor, and the Archbishop of with the assistance of the two vicars-general of the sai archbishops, with the consent of the two Lords Commission her Majesty's Treasury, at any time during the year 187 review the rates of the fees of the bishops' secretaries a gistrars, and the rates of surveyor's charges for work do pursuance of "The Ecclesiastical Dilapidations Act, 187 fixed or authorized to have been fixed under the 10th s of the same act, for the various dioceses throughout En and Wales, and that it shall be lawful for the Archbish Canterbury, the Lord Chancellor, and the Archbishop of and the other aforesaid constituted authorities, to ordai establish in lieu thereof, one uniform table of fees and ch to be binding throughout the whole of England and Wales.

By 2 & 3 V. c. 30, in benefices where there are more th spiritual person entitled to the cure of souls, the bishop may an apportionment of the duties, if no cause is shown b churchwardens and inhabitants to the contrary.

In various districts are *lecturers* and *preachers* in the holy of deacon or priest, elected or otherwise appointed to preac tures or sermons only, without the performance of other o duty; these, by the 7 & 8 V. c. 59, may be licensed by the b with the consent of the incumbent, to perform the duties of ant curates; such appointments do not except incumbents providing curates in cases where they are now liable. *clerks*, in holy orders, may in like manner be licensed to duty of an assistant curate.

The 23 & 24 V. c. 142, makes better provision for the su *benefices* in cities, towns, and boroughs. Contiguous benefic defined by 18 & 19 V. c. 120, may be united without reg aggregate population or yearly value. Bishop of London Winchester empowered to issue a commission addressed t persons, to make a report of a union project within six m unless prolonged. Three of the commissioners to be be clergymen, and two lay members of the Church of England. to receive any salary or payment. A scheme of union to b mitted to the churchwardens and vestry, who may notify assent or objection, s. 8. In the case of endowed lecture bishops may prepare a scheme as to the lectures custo preached in the churches to be pulled down. Sect. 28 rela the appropriation of seats in churches of united parishes. party sold to vest in Ecclesiastical Commissioners, s. 29.

90, provides, that where two or more benefices
or more portions of the same benefice, or of dif-
e constituted a separate benefice, and held by one
here are more churches than one situate within
h united or separate benefice, it shall be lawful
the diocese, upon the application and with the
g of the incumbent and patron or patrons of
with the consent of two-thirds of the parishioners
of such united or separate benefice in vestry as-
lty from his consistorial court, to decree that
:hes shall henceforth be constituted the parish
nited or separate benefice, and that any other
s within the limits of such united or separate
ther wholly or partly pulled down or suffered to

IENTATION OF BENEFICES.—By 26 & 27 V. c. 120,
ertain benefices (the presentation to which is in
r) is made saleable, and the purchase-money or
applicable to the augmentation of such benefices ;
benefices in the gift of his lordship may be sold.
pplied to the augmentation of poor livings in his
rons of purchasing advowsons to offer, in writ-
lor, stating terms and conditions. More offers
ceived, and no legal obligation imposed to accept
dule given of advowsons saleable. Chancellor
incumbent a return of income and outgoings in
s. Conditions of payment in whole or in half,
ecurity, s. 5. Any sum not exceeding half the
ayable to the Ecclesiastical Commissioners in
annuity at the rate of 3½ per cent. ; such
icable to the augmentation of the income of a
purchase-money, with compound interest, to be
sion on next advowson to the augmentation of
ne money paid into the bank may be applied in
ies or rent-charges, or parsonage houses may be
7, 8. When advowson has been purchased, the
ible. Any person or body of persons, corporate
purchase advowsons, but must not hold more
Purchaser of an advowson not to resell until
years. Tenant in tail, or in fee, may purchase
. Lord chancellor may apply purchase-money
in his gift ; but no benefice to be augmented
or to an annual value exceeding £1 for every
within limits of the benefice, s. 26. Business
be transacted by the chancellor's secretary of
chancellor not to incur personal liability in
ngs.

, empowers a bishop to license a clergyman of

the Church of England to *private chapels* belonging to schools or charitable institutions.

34 & 35 V. c. 37, provides for the adoption of *revised tables of lessons and psalter* in the place of those hitherto contained in prayer books.

35 & 36 V. c. 35, enacts that a certain shortened form of prayer, specified in the schedule, may, on any day except Sunday, Christmas-day, Ash Wednesday, Good Friday, and Ascension-day, be used, if in a cathedral in addition to, and if in a church in lieu of, the order of morning and evening prayer. Special services may be used on special occasions. Additional services may be used on Sundays and holy days. The act provides for separation of the services, and enacts that a sermon may be preached without previous service.

By 36 & 37 V. c. 55, landlords are empowered to convey land as sites for places of worship and for the residence of the minister, and a form of grant is given.

III. EPISCOPAL AND CAPITULAR ESTATES.

For the improvement of episcopal and capitular estates in Ireland, without prejudice to the interests of persons holding leases, facilities are given under 14 & 15 V. c. 104 (continued by 24 & 25 V. c. 131), for certain dealings between ecclesiastical corporations and their lessees.

By s. 1, any ecclesiastical corporation, with the approval in writing of the Church Estates Commissioners, may sell to any lessee under any lease granted by such corporation the reversion, estate, and interest of such corporation in all or any of the lands comprised in such lease, for such consideration, and in such manner, as such corporation and lessee may, with such approval, think fit; and it shall be lawful for such ecclesiastical corporation, with such approval, to enfranchise any copyhold held of any manor belonging to such corporation, or to exchange with any lessee under any lease granted by such corporation, all or any of the lands therein comprised, or the reversion, estate, and interest therein of such corporation, for any other lands, whether of freehold or copyhold, or for the estate and interest of such lessee in any other lands belonging to such corporation, and upon any such exchange either to receive or pay any money by way of equality of exchange; and it shall also be lawful for such corporation, with such approval, to purchase the estate and interest of any such lessee in any lands.

By s. 2, upon the surrender to an ecclesiastical corporation of the interest of a lessee *in a part only* of the lands comprised in a lease, the Church Estates Commissioners, by a memorandum in writing, which may be indorsed on such lease, may apportion the rent reserved, and which part shall continue payable, and such apportioned part of the rent shall be payable as if the same had *been the rent* originally reserved in respect of the lands not

The interests acquired by lessees under the act to be
ıe equities, and bound by the covenants of renewals, to
leases may be subject. Leaseholders' interest not to
d without consent of sub-lessees, who have covenants
Confirmation of conveyances by Church Estates Com-
o be a valid assurance, and no purchaser deriving title
ıssurance to be concerned to inquire into the propriety
of the consideration.
7 V. c. 35, a person preferred to a dignity in a cathe-
ıiate church between March, 1853, and January, 1855,
d to compensation on its abolition.
24 V. c. 124, amends the acts relating to the Ecclesias-
sioners and the act concerning episcopal and capitular
ter the passing of this act, s. 13 of 13 & 14 V. c. 94,
s the mode of securing the annual income of arch-
bishops, is repealed as respects future successions.
t avoidance of a see, the lands of each see to vest in
tical Commissioners, for the purposes of the commis-
nds sufficient to afford the statutory income to be
ch see. The remaining clauses are too diffuse and of
ıterest to be here noticed.

IV. CREATION OF NEW PARISHES.

V. c. 37, and the 7 & 8 V. c. 94, afford facilities for
on of populous districts and for the formation there-
ıte and distinct parishes for all ecclesiastical purposes,
the endowment and augmentation of poor livings. By
e Ecclesiastical Commissioners are empowered to bor-
0 of the governors of Queen Anne's Bounty on the
:he property accruing under the Cathedral Acts (3 & 4
nd 4 and 5 V. c. 39), to form districts for spiritual pur-
h populous parishes as are requisite, with the consent
p of the diocese, to be permanently endowed to the
ıt less than £100 per annum, or to be increased to £150
strict becoming a new parish. The scheme for the
: such district is to be submitted to her Majesty in
ng previous notice of the same to the patron and in-
the parish; and a minister is then to be nominated,
d by the bishop, who is to hold his office in the same
ı perpetual curate, and may in such character receive
r endowment, notwithstanding the statutes of mort-
temporary place of worship may be licensed by the
this is not to prevent marriages or burials for the
:he mother church, nor to affect certain other rights.
church being consecrated, the district is to become a
the minister to be a perpetual curate, and church-
: to be chosen and appointed; but this act is not to

affect parochial rights or privileges otherwise than as expressly provided, and compensation may be awarded to the incumbent of any parish whose emoluments may be diminished by the operation of this act. The patronage of such new districts may be conferred, either in perpetuity or for one or more nominations, on any person contributing to the permanent endowment of the minister, or towards providing a church or chapel for the use of the inhabitants. Unless so assigned, the patronage is to be exercised alternately by the crown and by the bishop of the diocese.

By 19 & 20 V. c. 104, a district containing a church may become a new parish on being constituted a separate district by order in council. By s. 5, a right to a pew in the old parish church is not to be retained after the occupation of sittings in the church of the new parish. Pew rents may be taken according to a scale, and applied towards the repair of the church, and to providing an endowment. Upon the permanent endowment of any church or chapel, a proportionate number of sittings to be declared free or pew rents to be reduced, s. 7. The 19 & 20 V. c. 50, enables parishioners, in certain parishes, and others, forming a numerous class, to sell advowsons held by or in trust for them, and to apply the proceeds in providing parsonage houses, augmenting small livings, and to other beneficial purposes.

The following table shows the acreage of every diocese of England and Wales. It was published in 1873 :—

Provinces and Dioceses.	Area in Statute Acres.
England and Wales, with the Channel Islands and the Isle of Man	37,512,868
Province of Canterbury	28,253,478
Province of York	9,259,390

Province of Canterbury.

Provinces and Dioceses.	Area in Statute Acres.	Provinces and Dioceses.	Area in Statute Acres.
Bangor	985,946	London	190,160
Bath and Wells ...	1,043,059	Norwich	1,994,525
Canterbury ...	914,170	Oxford	1,385,779
Chichester... ...	934,851	Peterborough ...	1,240,327
Ely	1,357,765	Rochester	1,589,096
Exeter	2,529,075	St Asaph	1,067,583
Gloucester & Bristol	1,000,503	St. David's ...	2,272,790
Hereford	985,244	Salisbury	1,309,617
Lichfield	1,740,607	Winchester ...	1,573,252
Lincoln	2,302,814	Worcester	1,037,451
Llandaff	797,864		

Province of York.

Provinces and Dioceses.	Area in Statute Acres.	Provinces and Dioceses.	Area in Statute Acres.
Carlisle ...	... 1,563,728	Ripon ...	... 2,098,582
Chester ...	... 968,312	Sodor and Man	... 145,325
Durham ...	... 1,906,835	York	... 1,730,704
Manchester	... 845,904		

V. SUBSCRIPTIONS AND DECLARATIONS BY THE CLERGY.

The 28 & 29 V. c. 122, amends the law as to the subscriptions and declarations to be made and the oaths to be taken by the established clergy. The following is the declaration of assent :—"I assent to the Thirty-nine Articles of Religion, and to the Book of Common Prayer and of the ordering of bishops, priests, and deacons. I believe the doctrine of the Church of England, as therein set forth, to be agreeable to the word of God; and in public prayer and administration of the sacraments I will use the form in the said book prescribed, and none other, except as ordered by lawful authority."

Declaration against Simony.—"I, *A.B.*, solemnly declare that I have not made, by myself or by any other person on my behalf, any payment, contract, or promise of any kind whatsoever which to the best of my knowledge or belief is simoniacal, touching or concerning the obtaining the preferment of
nor will I at any time hereafter perform or satisfy, in whole or in part, any such kind of payment, contract, or promise made by any other without my knowledge or consent."

Stipendiary Curate's Declaration.—"I, *A.B.*, incumbent of in the county of *bonâ fide* undertake to pay to *C.D.*, of in the county of the annual sum of pounds as a stipend for his services as curate; and I, *C.D.*, *bonâ fide* intend to receive the whole of the said stipend. And each of us, the said *A.B.* and *C.D.*, declares that no abatement is to be made out of the said stipend in respect of rent or consideration for the use of the glebe house; and that I, *A.B.*, undertake to pay the same, and I, *C.D.*, intend to receive the same, without any deduction or abatement whatsoever."

By s. 4, every person about to be priest or deacon, before ordination to make the declaration of assent, and subscribe the oath of allegiance and supremacy. No other declaration or oaths than those required by the act to be enforced. By s. 10, declaration of assent to be substituted in case of other ecclesiastical dignity, benefice, or office. Oaths not be administered during ordination or consecration services. Nothing to affect oath of canonical obedience to the bishops or the oath of due obedience to the arch-

bishop taken by bishops on consecration. Annexed to the act is a schedule of acts or parts of acts repealed, from 28 Hen. 8, c. 15, to 1 & 2 V. c. 106.

CHAPTER III.

Nobles and Commoners.

ALL degrees of nobility are derived from the queen, and she may institute what new title she pleases. Being conferred or created by the reigning sovereign, all degrees of nobility are not of equal antiquity. Those now in use in the United Kingdom are dukes, marquises, earls, viscounts, and barons, who constitute the peerage of the realm.

It is only the head of the family who has a proper title, though the junior members are usually considered noble. Those who are peers of England, or of the United Kingdom, have a seat in the House of Lords, which is transmitted by hereditary descent. Peers of Ireland and Scotland who are not peers of England can only sit in the Lords by election. It follows that there are two classes of nobles in the empire, those who inherit political power with their peerage titles, and those who do not, but are on the footing of commoners, like the younger branches of noble families that have titles by courtesy.

The right of peerage seems to have been originally territorial, that is, annexed to lands, honours, castles, or manors, the proprietors and possessors of which were allowed to be peers of the realm, and were summoned to parliament to do suit and service to the sovereign: when the land was alienated, the dignity passed with it as appendant; but when alienations grew frequent, the peerage was confined to the lineage of the party ennobled, and instead of territorial became personal.

A peer cannot lose his nobility except by death or attainder; though there is an instance in the reign of Edward IV. of the degradation of George Neville, Duke of Bedford, by act of parliament, on account of his poverty, which rendered him unable to support his dignity. It has been said, too, that if a baron waste his estate, so that he be not able to support his degree, the sovereign may degrade him; but it is now expressly held that a peer can be degraded only by act of parliament.

In treason, felony, and misprision of these offences, a nobleman must be tried by his peers; but in misdemeanours, as riots, libels, conspiracy, and perjury, a peer is tried like a commoner, by a jury.

Commoners consist of all those who are not peers, and, like the nobility, are graduated in ranks and degrees, as baronets and

knights. Esquires and gentlemen, according to Sir Edward Coke, are mere titles of *worship*, not of *dignity*, and before whom the heralds rank all colonels, serjeants-at-law, and doctors in the three learned professions.

The rules of precedence in England may be reduced to the following table, which is founded on various statutes, grants by letters-patent, and established custom :—

Queen's children and grandchildren
Queen's brothers
Queen's uncles
Queen's nephews
Archbishop of Canterbury
Lord Chancellor
Archbishop of York
Lord Treasurer } if barons
Lord President of the Council } if barons
Lord Privy Seal
Lord Great Chamberlain
Lord High Constable
Lord Marshal
Lord Admiral
Lord Steward of the household
Lord Chamberlain of the household
} Above all peers of their own degree.
Dukes
Marquises
Dukes' eldest sons
Earls
Marquises' eldest sons
Dukes' younger sons
Viscounts
Earls' eldest sons
Marquises' younger sons
Secretary of State, if a bishop
Bishop of London
Bishop of Durham
Bishop of Winchester
Bishops
Secretary of State, if a baron
Barons
Speaker of the House of Commons
Lords Commissioners of the Great Seal
Viscounts' eldest sons
Earls' younger sons
Barons' eldest sons
Knights of the Garter
Privy Councillors
Chancellor of the Exchequer
Chancellor of the Duchy of Lancaster
Chief Justice of the Queen's Bench
Master of the Rolls
Chief Justice of the Common Pleas
Chief Baron of the Exchequer
Judge Ordinary in Divorce Court
Vice-Chancellors
Judges and Barons of the coif
Knights Bannerets, royal
Viscounts' younger sons
Barons' younger sons
Baronets
Knights Bannerets
Knights of the Bath
Knights Bachelors
Baronets' eldest sons
Knights' eldest sons
Baronets' younger sons
Knights' younger sons
Colonels
Serjeants-at-law
Doctors
Barristers-at-law
Esquires
Gentlemen
Yeomen
Tradesmen
Artificers
Labourers

Married women and widows are entitled to the same rank among each other as their husbands would respectively have borne among themselves, except such rank is merely professional or official; and *unmarried* women to the same rank as their eldest brothers would bear during the lives of their fathers.

With respect to the rank of *esquire*, the distinction is somewhat unsettled; for it is not an estate, however large, that confers this degree. Camden, who was himself a herald, reckons up four sorts of esquires. 1. The eldest sons of knights, and their eldest sons in perpetual succession. 2. The eldest sons of peers, and their eldest sons in perpetual succession. 3. Esquires created by the queen's letters-patent, or other investiture (long since disused), and their eldest sons. 4. Esquires by virtue of their office, as justices of the peace, and others who bear any office or trust under the crown, and are styled esquires by the queen in their commission and appointment. Lastly, barristers are also esquires; and the court of Common Pleas refused to hear an affidavit read, because a barrister named in it was not called an esquire, 1 *Wils*, 244. The title is also now commonly applied to literary characters of eminence, the higher class of merchants, bankers, and persons living independently of trade or other pursuits for a maintenance.

The term *gentleman* is considered an inferior designation to that of esquire, but what the generic difference is between the two writers are not agreed. A *yeoman* is he that has freehold of forty shillings a year, who is qualified to vote for knights of the shire, and do any other act of a freeman.

The rest of the commonalty are *tradesmen*, *artificers*, and *labourers*, who must, by 1 H. 5, c. 5, be styled by the name and addition of their trade or occupation in all actions and other legal proceedings.

CHAPTER IV.

Public Officers.

I. SHERIFFS.

THE sheriff is an officer of great antiquity, and was formerly chosen by the people of the several counties, and, anciently, in some counties the office of sheriff was hereditary, and continued so in Scotland till 1746, and in the county of Westmoreland till 1850. But in the latter year, in order to remedy inconvenience, 13 & 14 V. c. 30, was passed, by which all hereditary claims to the office were abolished, and the crown was empowered to appoint as in other counties.

The discharge of the office is in general compulsory upon the party chosen, who is liable to indictment or information if he

refuse to serve. He holds his office for one year, and cannot be compelled to serve again for three years. He determines the election of knights of the shire, of coroners, and verderers.

He is *keeper of the queen's peace*, and may commit to prison any who attempt to break it. He may, and is bound, *ex officio*, to take all traitors and felons, and commit them to gaol for safe custody. He is also to defend his country against the queen's enemies, and, for this purpose, as well as for keeping the peace and pursuing felons, may command all the people of his county to attend him, which is called the *posse comitatus*, or power of the county; and this summons every person above fifteen years of age, and under the degree of a peer, is bound to attend on pain of fine and imprisonment. But he cannot try any criminal offence, nor can he, during his office, act as justice of the peace.

In his *ministerial capacity* he is bound to execute all processes issuing from the courts of justice: he, or his deputies, must serve the writ, arrest, take bail, summon and return the jury, and see the judgment of the court carried into execution.

As *queen's bailiff*, he preserves the rights of the crown within his bailiwick; he must seize, to the queen's use, all lands devolved to the crown by attainder or escheat; levy all fines and forfeitures, seize and keep all waifs, estrays, wrecks, and the like, unless granted to some private person; and, if commanded by process from the exchequer, must also collect the queen's rents in his county.

For the execution of his various duties he has usually under him an under-sheriff, bailiffs, and gaolers. The under-sheriff generally performs the chief functions of the office. A sheriff's officer is not allowed to be bail in a civil action, nor to be attorney in the queen's courts, during the time he is in office; but these statutory regulations are evaded by practising in the names of other attorneys, and putting in other nominal under-sheriffs.

By 1 V. c. 55, the sheriff only takes such fees as are allowed by the taxing officer of the courts of law at Westminster. During his office he is the first man in the county, and superior to every nobleman: he sits, or is entitled to sit, on the bench with the justices of assize.

By charter, the sheriffs of London and Middlesex are chosen by the city; no one is excused from paying the fine of £600 for not serving, unless he swears he is not worth £15,000.

II. CORONER.

This officer is chosen for life by the freeholders, but is removable for incapacity, extortion, neglect, or misbehaviour. The number of coroners is not fixed; in some counties there are six, in some four, and some have fewer. Their districts, and the time and manner of electing them, are regulated by the 7 & 8 V. c. 92,

on the model of the election of knights of the shire: but the statute does not extend to coroners appointed within certain precincts by the crown: nor to coroners by municipal or other charter, commission, or privilege.

The office of coroner is to inquire into the cause by which any person came to a violent or unnatural death, and this must be done upon *view of the body;* for if the body be not found, he cannot inquire, unless he have a special commission for the purpose. The coroner must also sit, if convenient, at the place where the death happened. If any be found guilty of murder or homicide, he is to commit them to prison for trial, and to inquire concerning their land or goods, whether any deodand has accrued to the queen, and certify the whole to the court of Queen's Bench, or the next assize. In illness he may appoint a deputy to act for him, and his inquisition cannot be quashed for mere technical errors.

The law is amended relating to the election, duties, and payment of county coroners by 23 & 24 V. c. 116. Provisions of 7 & 8 V. c. 92, extended to all counties, though not divided into districts for the purpose of such act. Polling at elections for coroners to continue one day only. From December 31, 1860, coroners to be paid by salaries out of the county rate, settled with the justices at general or quarter sessions, such salary not to be less than the average produce of the preceding five years of fees, mileage, and allowances. By s. 5, if a coroner refuse to hold an inquest, application may be made to judge for a rule to show cause; power given to the lord chancellor to remove coroner for inability or misbehaviour in his office, s. 6.

By 6 & 7 W. 4, c. 89, the coroner may summon medical practitioners to give evidence on inquests, and direct the performance of a post-mortem examination; and a majority of the jury may require the coroner to summon additional medical evidence, if the first be unsatisfactory. Fee of one guinea, payable out of the poor-rates, to be paid to medical witnesses, and two guineas if a post-mortem examination be performed. Penalty on medical practitioner neglecting to attend, £5. No fee payable on inquest held in any public infirmary or institution.

By 1 V. c 68, medical witnesses are to be paid at once by the coroner, in lieu of being referred to the churchwardens for payment. By the same act it is provided that, in respect of other expenses than to medical witnesses, the justices in general or quarter sessions, or the town council in boroughs having a coroner, shall prepare a schedule of fees, allowances, and disbursements to be paid by the coroner, which schedule may be varied from time to time, a copy of the schedule to be deposited with the clerk of the peace, and another with the coroner: the expenses of the inquest to be paid immediately on the conclusion of the proceedings. Coroner's accounts to be submitted to the sessions or the town council and settled out of the county rates, or the borough

fund, with 6s. 8d. extra for every inquest. The 9 & 10 V. c. 37 regulates the office of coroner and the expense of inquest in Ireland.

A coroner's court is a *close court*, for the purposes of the inquisition, and, acting judicially, he may exclude any one from the court who is there merely as a spectator or reporter, not for the purpose of giving evidence or information, 6 *Barn. & C.* 611. He has a discretion as to admitting or excluding any person from his court; and it seems a newspaper statement of an inquisition, accompanied with comments, is libellous, although the report be strictly true. He may disinter a dead body in order to view it, but if it is in such a state that it cannot be seen, the inquest may be taken by the jurors upon testimony. It is an indictable offence to bury a body liable to an inquest without sending for the coroner.

To prevent inconvenience and expense from the inability of coroners to admit to bail persons charged by the verdict of a coroner's jury with the offence of *manslaughter*, the 22 V. c. 33 enacts that in every case in which a coroner's jury has found a verdict of manslaughter against any person, the coroner, or his deputy before whom the inquest has been taken, may, if he think fit, accept good and sufficient bail for the appearance of the person charged at the next assize and general gaol delivery of the county. By s. 3, any person against whom coroner's jury had found a verdict of manslaughter may be supplied with copies of the depositions taken, at the rate of three-halfpence for every folio of ninety words.

Coroners may inquire as to found or hidden treasure; they are to execute writs where the sheriff is either plaintiff or defendant, and to return juries where the sheriff is in any way interested or is related to either party.

III. JUSTICES OF THE PEACE.

The lord chancellor, the lord treasurer, and all the justices of the Queen's Bench are, by virtue of their offices, conservators of the peace. The justices of the peace for the county are usually selected on the recommendation of the lord lieutenant, and are appointed by special commission under the great seal. They cannot act until they have taken out a writ of *dedimus* from the clerk of the crown, empowering certain persons therein named to administer the usual oaths to them. Some of the more eminent are of the *quorum*: that is, certain business cannot be transacted without their presence.

The powers and duties of justices depend on their commission, and on the several statutes which have created objects of their jurisdiction. They are commissioned to preserve the peace, to suppress riots and affrays, to commit felons and inferior criminals;

and two or more of them may inquire into and determine felonies and other misdemeanours. Their duties have greatly increased by late acts of parliament, especially in sessional business, in regulating gaols and houses of correction, in taking cognizance of various offences against the vagrant, game, and revenue laws, and in the licensing of public-houses.

By 18 G. 2, c. 20, every justice must have an estate of £100 per annum, clear of incumbrance, or the immediate reversion of reserved rents to the amount of £300; and if he act without such qualification, he forfeits £100. But this does not extend to corporation justices, peers, privy councillors, judges, under-secretaries of state; nor to the heads of colleges in the two universities, or mayors of Oxford and Cambridge.

By 34 & 35 V. c. 18, the law disqualifying attorneys, solicitors, and proctors in practice from being justices of the peace for counties has been repealed; but it is provided that no person shall be capable of becoming or being a justice of the peace for any county in England or Wales (not being a county of a city or county of a town) in which he shall practise and carry on the profession or business of an attorney, solicitor, or proctor.

A justice of the peace acts *ministerially* or *judicially*. *Ministerially*, in preserving the peace, hearing charges against offenders, issuing summonses or warrants thereon, examining the informant and his witnesses, binding over the parties to prosecute and give evidence, bailing the supposed offender, or committing him for trial. *Judicially*, as when he convicts for an offence. His conviction drawn up in due form, and unappealed against, is conclusive, and cannot be disputed by action.

The sitting of justices in court by virtue of their commissions is called sessions. By 9 G. 4, c. 43, amended by 10 G. 4, c. 46, justices are empowered to make such divisions of counties as are most convenient for the despatch of sessional and magisterial business. The justices residing in each division, although their commission extends to the whole county, yet, except at general or quarter sessions, ordinarily confine themselves to matters arising within the division. Within this limit they have generally one or more stated places, where they meet at certain stated times, monthly or oftener, as the public business may require, and there transact all such matters of a summary nature as, by law, require the presence of *more* than one justice, and yet need not be done at general, quarter, or special sessions. These meetings are properly *petty* sessions. *Special* sessions are meetings held by the justices of divisions for some especial purpose, by notice, specifying the time, the place, and purpose. These are held in pursuance of sundry statutes, directing particular things (the diversion of highways, for instance) to be done at such meetings. As the time and place of these meetings are occasional, and vary with the object, a reasonable notice to all the magistrates of the division is necessary

to render the orders made there valid. The *general quarter sessions* are held four times a year, in each county, for the trial of larceny, assaults, and misdemeanours, punishable with transportation, fine, imprisonment, or whipping; the more atrocious offences, as murder and burglaries, being left to be tried at the county assizes.

If a justice of the peace act illegally, maliciously, or corruptly, he is punishable by information or indictment. When a criminal information is applied for against a magistrate, the question for the court is not whether the act done be found, on investigation, not strictly right, but whether it proceeded from an unjust, oppressive, or corrupt motive (among which *fear* and *favour* are generally included), or from mistake or error only. He is likewise liable to an action for illegal acts done by colour of his office, but no justice can be sued for any oversight without notice one calendar month beforehand, nor at all after the expiration of six months (in the case of metropolitan magistrates three months) from the commission of the injury. (See 11 & 12 V. c. 44.)

Justices of the peace are empowered by 7 G. 4, c. 64, to take bail in cases of felony, where there is not a strong presumption of guilt against the party brought before them. It also requires them to take the most material part of the evidence on examination before them *in writing*, to be returned to the assizes, both in charges of felony and misdemeanour, and 12 & 13 V. c. 64, enacts that all power which may be exercised, out of general or quarter sessions, by two or more county justices, may be exercised by two or more city or borough justices having jurisdiction therein.

By 21 & 22 V. c. 73, a *stipendiary magistrate* of any city, borough, or district, sitting at a police court, or place so appointed, may do alone all acts authorized to be done by two justices. Such power to extend to acts of jurisdiction required to be done by justices at petty sessions. But not to extend to quarter or special sessions, nor to the grant of licenses, nor to the police magistrates of London. By s. 9, justices of quarter sessions may appoint two or more justices to form a second court for the hearing and determining such business as may be referred to them, and by 32 & 33 V. c. 34, power is given to a stipendiary magistrate to appoint a deputy who shall have practised as a barrister-at-law for seven years to act for him for a period not exceeding six weeks in a year.

The 26 & 27 V. c. 97, enables cities, towns, and boroughs of 25,000 inhabitants and others to appoint stipendiary magistrates to meet the demand of an increasing population and difficult legal questions arising. By s. 3, two-thirds of the number of any local board may decide upon the expediency of appointing a stipendiary magistrate and fix amount of salary, subject to approval of secretary of state. Such stipendiary to be a barrister-at-law of not less

than five years' standing, and hold office during the pleasure of the crown. Justice need not be qualified by estate; may act where one or two justices may act, but not sit in court of gaol delivery, or in the levying any county or similar rate, s. 5. Board required by s 4 to provide a suitable police office, not a room in a licensed or other alehouse.

The 27 & 28 V. c. 65 supplies a deficiency in the act of William and Mary, in relation to the removal of clerks of the peace for misconduct. By s. 2, if it appear, on examination in open court, to two justices of the county, on complaint in writing, that a clerk of the peace has been guilty of misconduct, otherwise than in the execution of his office, they may suspend or remove him from office as an unfit person. Power of appeal to the lord chancellor.

IV. POLICE JUSTICES OF THE METROPOLIS.

Police justices are stipendiary magistrates, which, exclusive of those in Bow Street office, were first created by act of parliament in 1792. They are limited to twenty-seven in number, must be barristers, and are appointed by, and under the control of the secretary of state for the home department. Their duties are judicial, and consist in the examination and discharge or commitment of offenders brought before them by the constables under the control of the police commissioner. One magistrate is required to attend at each of the police courts every day except Sunday, Christmas-day, Good Friday, or any public fast or thanksgiving day, from ten in the morning until five in the afternoon, and at such other times as may be directed by a secretary of state.

Two police commissioners for the metropolis and vicinity were instituted under 10 G. 4, c. 44, and are empowered to act as justices in the counties of Middlesex, Surrey, Herts, Essex, Bucks, and Berks; but they are not to act in any court of general or quarter sessions, nor in any matter out of sessions, except for the preservation of the peace, and the detection and committal of offenders. They are exempt from any qualification *by estate*, and have the entire control of the nightly watch and police within the limits of the metropolitan police district, and which district may be extended to any parish or place within the limits of the Central Criminal Court, not distant more than fifteen miles in a right line from Charing Cross.

By 19 & 20 V. c. 2, in lieu of two, there is to be only one commissioner of police, to be styled, "the commissioner of police of the metropolis," and two assistant commissioners are to be appointed, having the qualifications and powers prescribed by 10 G. 4. Salary of the sole commissioner not to exceed £1,500, that of each assistant commissioner not to exceed £800. In case of vacancy, or

ces of chief commissioner, one assistant commissioner to

ollowing are the chief regulations of the Police acts, which missioners and constables are empowered to enforce, and bitants of the city, and within the limits of the metropoli- ricts, are required to observe:—

es of public resort, as beer-shops, coffee-shops, cook-shops, tners, are placed under the same regulations as public- or the prevention of disorderly conduct, or the resort thither oper characters. Unlicensed theatres, and places for fight- aiting animals, birds, &c., prohibited. Reputed common houses may be forcibly entered by the police, and the and all present in it without lawful excuse, be taken into and punished. Pawnbrokers are prohibited from taking or purchasing articles from children who are apparently welve years of age. (*See* Licensed Victuallers and Pawn-)

ns driving cattle or vehicles are required to attend to the ssued by the commissioners of police for their regulation he hours of divine service.

nces in the thoroughfares are prohibited; as showing cattle feeding or exercising horses, &c.; making or repairing any except in cases of absolute necessity); letting an unmuzzled s dog go at large; hunting cattle or negligently driving obstructing passengers by means of a horse, vehicle, &c.; cask, wheel, &c., on the footpath, or carrying show-boards rds upon the same; posting bills or otherwise defacing ng of any description; or selling or exposing any indecent

treet musicians must depart from any particular locality ired to do so by a householder.

aster of a vessel lying in the Thames, between Westminster ckwall, may keep any gun loaded with shot on board; nor gun between sunset and sunrise; nor may he heat, or hers to heat, any combustible matter on board.

oth or house or other place of entertainment at any fair kept open after eleven o'clock at night, nor be opened ix in the morning.

Drunken person guilty of riotous or indecent behaviour, n the street or the station-house, punishable by fine or ment for seven days.

erson driving or riding in any vehicle without the owner's as behind a coach, for example, is punishable. So is any reating a nuisance by any noisome smell; throwing out of ses any filth, refuse, or obstructive materials; shaking or carpets, &c., excepting door mats, before eight o'clock in ning; emptying any cesspool, &c., between six in the and twelve at night; exposing things for sale in any park

or public garden without consent; or obstructing the footpath or carriage-way by any projection or otherwise; or leaving open any vault, cellar, &c.

Any prostitute or other person loitering about at night, to the annoyance of passengers or inhabitants; any person provoking to a breach of the peace, by abusive or threatening words; blowing a horn or other noisy instrument; discharging fire-arms, throwing stones, making bonfires and slides; or flying kites, or playing at any game to the annoyance of inhabitants or passengers; ringing any door-bell, knocking at any door, or extinguishing any light without lawful excuse: these are all offences liable to fine or imprisonment.

The principal powers conferred upon the police are as follows:—

They may act on the river Thames, and at any time board vessels, to observe the conduct of persons on board. They are to enforce any regulations made by the commissioners to prevent obstructions in the streets. They may destroy any dog or other animal supposed to be in a rabid state. They may apprehend, without a warrant, any person seen by them to have committed an offence, as well as any disorderly person or persons suspected of having committed, or being about to commit, any felony, misdemeanour, or breach of the peace; as also any person lying or loitering about and not giving a satisfactory account of him or herself.

They may also apprehend, without a warrant, any person charged with an aggravated assault, or with a misdemeanour or felony, though not committed in their presence.

They may stop and search any vessel, cart, or other vehicle, in which they may suspect there is stolen property, as well as any person suspected of being concerned in illegally conveying away any property.

They may stop and detain, until due inquiry be made, any vehicle employed in removing furniture between the hours of eight in the evening and six in the morning; or whenever they shall have good grounds for believing such removal is made to evade the payment of rent.

They are to take every person apprehended without a warrant to the station-house, where the superintendent is empowered to take bail for appearance before a magistrate.

Resisting the police in the execution of their duty, or inciting any person so to do, subject to a penalty of £5, or one month's imprisonment, at the discretion of the magistrate.

The number of police courts, exclusive of two in the city, is eleven, with those of Greenwich and Wandsworth. By 3 & 4 V. c. 84, the queen in council may establish new police courts or districts, and a police magistrate may act anywhere within the limits of the metropolitan police district. Appeal may be had from any leet jury, or other court, to a police magistrate, in regard of weights and measures. Duties respecting the balloting for militia to be performed by the constables, who may also, with

the presence of two justices, put landlords in possession of premises deserted, or kept by a tenant in arrear of rent.

The 23 & 24 V. c. 135 provides for the employment of such number of the metropolitan police force as a secretary of state may direct in her Majesty's *dockyards and arsenals or the principal stations of the war department*, in any part of England and Wales, and within fifteen miles thereof. Constables so employed to be replaced by the metropolitan commissioner by additional constables; they are to be sworn by him, and he is to frame special regulations for the conduct of constables employed in yards and military stations. Constables and assistant commissioners to act in like manner as in execution of the acts relating to the police of the metropolis, s. 3. Charges incurred for constables under this act to be defrayed out of moneys provided by parliament.

V. CONSTABLES.

These are very ancient conservators of the peace, and are mostly chosen by the court-leet, the parishioners, or magistrates, and sworn in by the justices. They are of three kinds, namely, *high* constable, *petty* constable, and *special* constable.

The office of the *high* constable is not confined to any particular town or parish, but extends to the hundred for which he is appointed. The *petty* constable's jurisdiction generally extends to the parish, borough, or liberty for which he is chosen, and in which he must be resident; but he may execute a warrant anywhere within the jurisdiction of the magistrate who issues or indorses the same. The *special* constable's jurisdiction is much the same as the petty constable's, and he is, in fact, only appointed in particular emergencies, to assist the former in his duties.

Exemptions from the office.—1. Aged persons incapacitated by weakness; and, in Westminster, those sixty-three years old are expressly exempted. 2. Aldermen of London. 3. Apothecaries practising in or within seven miles of London, free of the company; or in the country, having served seven years. 4. Attorneys of the court of Queen's Bench and Common Pleas. 5. Practising barristers. 6. Dissenters, being teachers or preachers, but not otherwise. 7. Foreigners naturalised. 8. Sergeants and private men serving in the militia. 9. Prosecutors of felons, and the first assignee of the certificate. 10. Surgeons free of the company. 11, and last. Physicians, being president or fellows of the college of London, but no others, nor elsewhere, are exempt.

As the office of constable may be executed by DEPUTY, officers of the guards are not exempt, nor officers in the customs, nor a younger brother of the Trinity House, nor masters of arts, nor women, 2 *Hawk.* c. 10, s. 37. The queen may exempt any one from being constable if there be a sufficient number of persons left to serve the office, 1 *T. R.* 686.

The general duties of a constable are, to prevent the violation of the laws, to apprehend offenders, to preserve the peace of his district, to attend, on particular occasions, excise officers, and execute the warrants of coroners and justices of the peace. In the lawful discharge of their duties, they may call to their aid the assistance of bystanders, or their neighbours; and such persons are bound to assist them on pain of fine and imprisonment.

If persons are engaged in an affray, or on the point of entering into one, as where one shall threaten to beat another, the constable may apprehend the offender, and carry him before a justice, or he may imprison him on his own authority, till the heat be over, and afterwards detain him till he find sureties for his good behaviour.

If an affray be in a house, the constable may break open the doors to preserve the peace; but he cannot apprehend for an affray, or assault, committed *out of his presence*, without a warrant from a magistrate, unless in case of felony, or he belongs to the metropolitan police force.

A constable may justify an imprisonment without warrant, on a reasonable charge of felony made to him, though he afterwards discharge the prisoner without taking him before a magistrate, and though it turn out no felony has been committed. But, in general, a constable cannot, without an express charge or warrant, justify the arrest of the supposed offender, upon suspicion of guilt, unless an actual felony has been committed, and there is reasonable cause for suspicion that the party apprehended is guilty.

In executing a warrant, the arrest is to be made by laying hold of, or at least securing, the person of the party; without this it is not a legal arrest.

A constable, being a known and sworn officer within his own district, is not obliged to show his warrant on being demanded; but if he is not sworn, or out of his district, he must produce his warrant. A *warrant of distress*, however, must, if required, be shown to the person whose goods are distrained. He need not return his warrant after execution, but may keep it for his own justification.

No one can justify breaking open a door to make an arrest, without first acquainting the owner with the cause of his coming, and requesting admittance; no particular form of notice is requisite: it is sufficient to say the officer comes under a proper authority, not as a trespasser.

If there be disorderly drinking or noise in a house at an unseasonable hour of the night (especially at an inn, tavern, ale, or coffee-house), the constable may, after demanding admittance, and refusal, break open the door, to see what is doing, and suppress the disorder. But, upon a general warrant, expressing neither treason, felony, nor breach of the peace, an officer cannot break open any door to execute it; nor can he forcibly enter any house to distrain

for poor rate or church rate ; or to execute process in a *civil suit ;* but if he find the outer door open, or if it be opened to him, he may then force an inner door. This privilege is strictly confined to outer doors ; so that if any officer gain admission to a house where any one lodges whom he is in search of, he may justify breaking open any of the apartments to execute his process, unless the whole house is let in lodgings : then each apartment is deemed a separate dwelling.

If an offender cannot be conveniently conveyed before a justice, or to prison, he may be put, *pro tempore*, in the stocks.

Persons apprehended in adultery, fornication, or a bawdy-house, may be carried before a justice, to find sureties for their good behaviour.

Constables are to assist landlords in distraining for rent, under authority of a justice's warrant ; and, in company with such landlords, may break open and enter houses and other places, to search for goods suspected to be concealed to avoid the distress.

Penalties.—By 33 G. 3, c. 55, if a constable, upon complaint, upon oath, before two justices be convicted of neglect of duty, or disobedience of any lawful warrant or order, he may be fined 40*s*. Not going with an officer of excise on notice or request, when his presence is requisite, subjects to a penalty of £20, 7 & 8 G. 4, c. 53. A like penalty may be inflicted for not assisting, either on his own view or notice, in the execution of the laws for preventing illicit distillation, 6 G. 4, c. 80, s. 144. And 5 G. 4, c. 83, neglecting his duty, under Vagrant Act, subjects him to a penalty of £5. Assaulting a constable, to prevent the arrest or detention of persons charged with felony, subjects to transportation for seven years, 1 & 2 G. 4, c. 88. No action can be brought against a constable for the improper discharge of his duty after six months has elapsed.

It is a misdemeanour in a constable to discharge an offender brought to a watchhouse by a watchman in the night ; and if he wilfully let the felon escape, it is felony.

The 5 V. c. 109, amended by 7 V. c. 52, regulates the districts of parish constables, and the duties of justices and overseers in their election and appointment.

VI. SPECIAL, COUNTY, AND DISTRICT CONSTABULARY.

The 1 & 2 W. 4, c. 41, authorizes two or more justices, in all cases of felony or disturbance, or on the apprehension of such, to appoint any number of housekeepers and others to act as *special constables* for the maintenance of the peace and the security of persons and property. Persons *exempt by law* may be sworn in by the justices to serve for two months, under an order from the secretary

of state; who may also direct any lord lieutenant to cause special constables to be sworn in throughout the whole county, or any hundred, division, or parish thereof; and no exemption allowed. Justices may frame regulations for rendering the office more efficient, and the duties, powers, and responsibilities of the special constable are extended through the entire jurisdiction of the justices appointing him; and even in case of emergency into the adjoining county. Refusing to serve, or to take the oath, or disobeying any lawful order and direction for the better discharge of the duties of the office, subjects to a penalty not exceeding £5. Refusing or omitting to deliver up the staff or other articles provided, within one week after the expiration of the office, incurs a fine not exceeding 40*s*.

The provisions of this act are materially extended by 2 & 3 V. c. 93, which empowers the justices of any county, in quarter sessions, to make application to the secretary of state for the establishment of a *county and district constabulary* for the protection of the inhabitants and the security of property, provided that the number of constables does not exceed one constable for every 1,000 inhabitants. Rules for the pay, clothing, and accoutrements of this rural police are to be framed by the secretary of state. One or more chief constables to be appointed for each county by the justices, subject to the approval of the home secretary; and the chief constables, subject to the approval of two or more justices, are to appoint superintendents and the petty constables. The constables not to resign without leave, or giving one month's notice, and are generally subject to the same regulations as the police force of the metropolis.

By 3 & 4 V. c. 88, magistrates in quarter sessions may make rules for the regulation of county and district constables, and for raising a police rate.

By 20 V. c. 2, power is given to justices to appoint a person to be chief constable, although he may hold a similar appointment in an adjoining county.

VII. POLICE OF COUNTIES AND BOROUGHS.

The acts referred to in the last section, the 2 & 3 V. and 3 & 4 V., are rendered more effectual for the improvement of the police of *counties and boroughs* by the 19 & 20 V. c. 69. By s. 1, in every county where a constabulary has not been already established for the whole of the county, the justices at the general quarter sessions next after December 1, 1856, are to proceed to establish a sufficient police force for the whole of the county, or where a constabulary is established for a part of the county, then for the residue of the county, and to declare the number of con-

stables requisite, and the rates of pay, and report their proceedings to the secretary of state, and upon the receipt from the secretary of such rules as are provided by 2 & 3 V. and 3 & 4 V., these acts are to take effect, and to be applicable to the whole of the county, subject to the amendments of the new acts. This is not to apply to counties which report to the secretary of state prior to December 1, 1856.

By s. 3, where constabularies have been established in the division or residue of a county, such establishments are to be consolidated into one general police force, and a chief constable appointed for the county. Upon the petition of persons contributing or liable to contribute to the police rate, separate police districts may be constituted by an order in council in counties with a distinctive number of constables, the expense being defrayed by the districts, ss. 3, 4.

Upon the representation by the council of a borough to the secretary of state, that application has been made to the justices of an adjoining county to consolidate the police of the borough and county in the way provided by 3 & 4 V., and that such consolidation has not been effected, an order in council may issue to fix the terms, conditions, and date upon which such consolidation shall be effected.

By s. 6, county constables are to have like powers and duties in boroughs as borough constables have in counties. Constables to perform duties connected with police as directed by justices in session, or watch committee. No constable to receive to his own use fees for the performance of his duties. Borough constables appointed under the Municipal Corporation Act, 5 & 6 W. 4, c. 76, are disqualified from voting at parliamentary elections, or in the election of any person to a municipal office in the borough, penalty £10, and a like penalty for attempting to influence the vote of any elector, either in parliamentary or municipal elections, s. 9. Gratuities may be granted to constables incapacitated, and to officers superseded by the county police.

Annual statements to be furnished to the secretary of state by justices or watch committees as to crimes in counties and boroughs. Three inspectors may be appointed under the royal sign manual to inquire into the state and efficiency of the police, and whether the provisions of the acts under which they are appointed are duly observed, ss. 14, 15. On the certificate of the secretary of state that an efficient police has been established in any county or borough, *one-fourth* of the charge of pay and clothing of the police to be paid by the Treasury; but not to be paid to any borough whose population does not exceed 5,000, and not consolidated with the county police.

These acts on the police of counties and boroughs are amended by 22 & 23 V. c. 32, and power given to justices in session to

unite two or more police districts, with or without any alteration of their limits; or to consolidate for police purposes any district with the rest, or with any part of their county. No county constable required to act in any borough having a separate police establishment, except in the execution of warrants of county justice, or the chief constable; nor is a borough constable required to act out of his borough except in execution of the warrant of borough justice, or under direction from the watch committee in case of special emergency. County constables not to vote in the election of municipal officers, or to influence any voter, under a penalty of £10. By s. 6, watch rates may be levied to any amount at the discretion of the borough council, not exceeding in any one year 8*d.* in the pound. Remaining sections principally refer to superannuations, rewards for good services, and gratuities to widows of constables dying in service.

Any man belonging to the metropolitan police may, during the time he is on duty, apprehend all "loose, idle, and disorderly persons whom he shall find disturbing the public peace, or whom he shall have just cause to suspect of any evil designs, and all persons whom he shall find, between sunset and the hour of eight in the forenoon, lying in any highway, yard, or other place, or loitering therein, and not giving a satisfactory account of themselves."

If either watchman or constable be killed in the discharge of his duty, it is murder.

CHAPTER V.

Parish Officers and Poor Laws.

I. PRESIDENT AND COMMISSIONERS OF POOR LAWS.

In the year 1834, by 4 & 5 W. 4, c. 76, the relief of the poor in England and Wales, according to existing laws, was placed under the control and direction of three commissioners appointed, paid, and removable by the crown; and who were authorized to make *rules* for the management of the poor and poor children, the government of workhouses, the conduct of guardians, vestries, and officers; the keeping, examining, auditing, and allowing of accounts; the making of contracts, and in all other matters connected with the relief and expenditure of the *poor*. But the commissioners were not to interefere *in any individual case* for the purpose of ordinary relief. This commission was superseded in 1847, but in lieu of it a new board was established by 10 & 11 V.

...100, and 30 & 31 V. c. 106, which was called the Poor Law ...ment.

All the powers and duties of the former commissioners were ...ferred to the new commissioners, who had power to summon ...d examine witnesses on oath, and to enforce the production of ...ers, &c.; but so much of the previous act was repealed as re...ired a minute of the opinions of each commissioner in case of a ...difference of opinion. The commissioners were to make an ...nual report to her Majesty, to be laid before parliament.

Rules and orders to be made under seal, except such as were ...ramed by the commissioners for their own guidance. All rules ...orders affecting more than one union to be deemed a *general* ...*le*; the provision in the previous act relating to general rules ...s repealed, and the queen in council might disallow any general ...le; but existing rules to continue in force till altered or re...ealed.

By s. 26, every person who, upon any examination, shall ...ilfully give false evidence, or wilfully make a false declaration, ...on being convicted, to suffer the penalties of perjury; and ...y person who wilfully neglects to attend in obedience to ...summons of the commissioners or any inspector, or to give ...dence, or who wilfully alters, suppresses, conceals, destroys, ...refuses to produce any books or documents which might be re...uired, to any authorised person, is guilty of a misdemeanour.

Under 4 & 5 W. 4, c. 76, commissioners might call for and ...amine an account of all *trusts and charity estates and funds* ap...icable to the relief of the poor; such account to be open to ...e inspection of owners and ratepayers.

Unions.—Commissioners might direct any number of parishes to ...e united for the relief of the poor, with a common workhouse. ...n a union of parishes was proposed, commissioners were to ...quire into the expense of the poor belonging to each parish for ...three years preceding, and each parish was to contribute to...ds a common fund, on which is now, by 28 & 29 V. c. 79, ...aid all the cost of the relief of union poor as well as certain ...her expenses incurred by the board of guardians in the propor...ion which it has already stood with relation to the other ...rishes.

The commissioners might, without consent of the guardians, dissolve ...nions (except when united for purpose of settlement or voting), ...dd to or take from it any parish, and make such rules as seemed ...ecessary to its altered state. United parishes might, with consent ...of the guardians, and of the commissioners, be *one parish* for the ...*rule of settlement among themselves*. After such agreement, ...rule, or proportion of contribution to the common fund, is ...also varied; the settlement being common throughout the ...union, the distinction of each parish paying for its own poor is ...done away with. With the like consent of guardians and com-

missioners, a union might have a *joint rate* as one parish, and in such case all expenditure for the poor to be in common.

OFFICERS.—Commissioners might direct overseers and guardians to appoint *paid* officers for any parish or union, and fix their duties, mode of appointment, salaries, and securities. Masters of workhouses and paid officers removable by commissioners, and persons so removed not competent to fill any parish office. No person convicted of felony, fraud, or perjury eligible to hold any parish office, or have the management of the poor. The word "*officer*" extends to any person employed in carrying the laws for the relief of the poor into execution.

In 1871, a board called the Local Government Board was established by 34 & 35 V. c. 70, consisting of a president to be appointed by the Crown and certain *ex officio* members named in the act, in whom are now concentrated the functions just mentioned of the Poor Law Board and the duties of the Home Secretary under the acts relating to Registration of Births, Deaths, and Marriages, Public Health, Local Government, Drainage, Sanitary Matters, Baths and Wash-houses, Public Improvements, Towns Improvements, Artisans' and Labourers' Dwellings, Returns, and Local Taxation, and the duties of the Privy Council under the acts relating to the Prevention of Disease, and to Vaccination.

This board has the power to appoint secretary, assistant secretaries, inspectors, clerks, &c.; and the president, and the secretaries, clerks, &c. (but not the *ex officio* members), are to be paid salaries, out of the public money, to be determined by the Treasury. The president and one of the secretaries may sit in Parliament. Any rule made by the board is valid if it is made under the seal of the board and signed by the president or one of the *ex officio* members, and countersigned by a secretary or assistant secretary.

GUARDIANS.—These, in the interpretation clause of 4 & 5 W. 4, c. 76, are construed to mean any visitor, governor, director, manager, acting guardian, vestryman, or other officer in a parish or union, entitled to act as manager of the poor, and in the distribution or ordering of relief under any general or local act of parliament, s. 109. Under this act guardians are to have the entire management of the poor, and are to be elected by each parish in union, by the ratepayers and owners, within forty days of the 25th of March in every year; their number, duties, and qualification to be determined by the commissioners; but qualification not to exceed a rental of £40 a year, and one guardian at least to be elected for each parish. They may be re-elected. Any county magistrate in the district is *ex officio* a guardian. Commissioners may direct a board of guardians to be established, with like powers, in any *single* parish, and justices to be *ex officio* members; or they may alter the number of guardians with reference to population, and if the population of a parish exceed 20,000, it may be divided into wards, having separate guardians, 7 & 8 V. c. 101.

rks and officers may conduct proceedings before justices at sessions on behalf of the guardians, although not certificated ers. 7 V. c. 101, s. 68.

12 & 13 V. c. 103, s. 13, the guardians of a union or parish, the orders of the Poor-law Board, may contract to receive heir workhouse the poor of any other parish or union, in case overcrowding of the workhouse, the prevalence or apprehen- f any epidemic or contagious disease, or to carry out any local tion for the emigration of poor persons. Under s. 16, guar- are authorized to appropriate any money or valuable security auper, so far as is necessary, to reimburse them for outlay on at of such pauper.

14 & 15 V. c. 105, s. 3, malpractices at the election of ians, as altering, destroying, or purloining nomination or papers used therein, or personating a voter, or interrupting tation of voting papers, are made punishable with imprison- for any period not exceeding three months. Section 4 em- guardians to subscribe to a hospital or infirmary with con- f the Poor-law Board. Children under sixteen years who phans or deserted by parents, or with consent of surviving and the Poor-law Board, may be sent by contract to a ouse belonging to another union or parish, and where there quate accommodation for instruction and maintenance, s. 6. given by s. 12 to the guardians of two unions or parishes to by mutual consent, questions of settlement, removal, or ability to the Poor-law Board. By s. 16, the limit of ex- to be incurred in school districts, within the metropolitan district, extended from one-fifth to one-third.

11 and 12 V. c. 110, poor persons having a fixed place of who may meet with an accident or bodily casualty in any or parish in which they have no legal settlement, are to be d by the officers of the parish or union in which the casualty s. but the cost is to be reimbursed by the parish to which long.

18 & 19 V. c. 34, guardians may grant relief for enabling parents to provide *education* for their children, if between and four and sixteen years, in any school approved by the ans.

Votes.—At the election of guardians, and all other elections, es are to be taken in *writing*, and the rights of voting in and ratepayers are assimilated by 7 & 8 V. c. 101. A ty of votes allowed: if the property be rated upon a e value of less than £50, one vote; rateable value £50, or an £100, two votes; £100, or less than £150, three votes; but less than £200, four votes; £200, but less than £250, es; and if it amount to or *exceed* £250, six votes. When a is owner and occupier he may vote in both capacities.

13 & 14 V. c. 101, s. 15, owners must give notice of voting

before February 1st; they may vote by *proxy;* but no person ca be proxy for more than four owners in one parish, unless steward or land agent; nor does appointment of proxy continue longer tha two years, unless a steward or land agent. No ratepayer to vo unless rated one year, and parochial rates paid. In case of pr perty belonging to a corporation, or to any joint-stock or oth company, the officer of the same may vote.

WORKHOUSES.—Under this designation is included any house i which the poor of any parish or union is lodged or maintained, any house or building used at the expense of the poor rate by a parish vestry, guardians, or overseers, for the reception, employ ment, classification, or relief of the poor, s. 109.

Commissioners may order workhouses to be built, hired, altere or enlarged, with consent of a majority of owners and ratepaye voting as already described. Sums to be raised for the purpose be charged on the rates, but not to exceed one year's avera amount, and loan borrowed to be paid in ten equal yearly insta ments. Commissioners may order workhouses already erected to altered or enlarged *without consent* of the parish, but the mon to be raised for the purpose must not exceed one tenth of one yea rates, or £50. They may make rules for the government of wor house, and may vary by-laws already in force. Justices are e powered to see by-laws enforced, and to visit workhouses, as direct under 33 G. 3, c. 49. Where no rules have been framed by co missioners, the power of any justice, medical person, or clergyma as heretofore exercised in the visiting of workhouses, is reserve Introducing *spirituous* or *fermented* liquors into a workhouse, wit out the order, in writing, of the master, subjects to a penalty £10, or two months' imprisonment. Master of workhouse int ducing prohibited liquors into the workhouse (except for h domestic use), without authority of the surgeon, justice, guardian or commissioners; or ill-treating poor persons, or otherwise mi conducting himself, is subject to a penalty of £20 or not exceedi six months' imprisonment. No *dangerous* lunatic, insane pe son, or idiot, to be detained in any workhouse exceeding fourte days.

The 5 & 6 W. 4, c. 69, makes provision for the sale or exchan of lands or houses belonging to any ecclesiastical corporation s for sites for workhouses, or, in case such corporation sole is unsound mind, the 20 & 21 V. c. 13, empowers the guardians managers to petition the lord chancellor to execute.

A *pauper* deserting or running away from a workhouse, carryi off clothes or other goods, subject to imprisonment in the house correction for any term not less than seven days or exceeding thr calendar months. Refusing to work at any employment suited age, strength, or capacity, drunkenness, or other misbehaviour, su jects to imprisonment and hard labour for any period not exceedi forty-one days, 7 V. c. 101, s. 58.

10 & 11 V c. 109, s. 23, two persons, being husband and and above the age of sixty years, are not compellable to live te and apart from each other in a workhouse.

s. 24, where boards of guardians neglect or refuse to appoint ing committee for the purpose of visiting the workhouse of ion, or when such committee neglect to visit it for three s, the commissioners are to appoint a paid visitor, not one of ardians, but the appointment is to cease at the expiration of months after the appointment of the visiting committee by ardians.

11 & 12 V. c. 110, s. 9, persons chargeable upon the common of a union, and convicted before a justice of an offence com- l against the workhouse rules while maintained therein, may t to the county gaol or house of correction, and the charges to me by the county.

s. 10, persons professing to be wayfarers or wanderers are to rched upon admission into a workhouse, and any money found them to be delivered to the guardians in aid of the common of the union; and any person applying for relief, possessed of r or other property, of which on inquiry he shall not make and complete disclosure to the guardians or their officers, is deemed an idle and disorderly person, and punished accord-

COUNTS AND CONTRACTS.—Overseers and other officers to pass accounts *half-yearly*, or oftener if commissioner direct, in ion to the annual account. No contract valid unless conform- to the rules of the commissioners. A penalty of £100 on n having the management of the poor being concerned in any act. No person employed in the administration of the poor to furnish for his own profit goods or provisions given as paro- relief, or to supply the same in respect to money ordered to en to any person as parochial relief; penalty £5.

13 & 14 V. c. 101, s. 8, paupers convicted of absconding a workhouse, and carrying away clothes, linen, or other goods, in addition to imprisonment, be kept to hard labour. As- ·ult upon a workhouse or relieving officer, while in the discharge ·duty, made similarly punishable as an assault upon a constable renue officer, s. 9. By s. 6, no master of a workhouse or ing officer to be appointed to parochial or township office.

IGRATION.—Owners and ratepayers may raise or borrow money, ceeding half the average yearly rate for the three preceding , for the purpose of enabling the poor to emigrate, but money not to be raised on the security of the rate without sent of the commissioners, and the period of repayment not ceed five years. Guardians are to apply the money so ob- d, and subject to such limits, to defray the expense of emi- n, 7 V. c. 101, s. 29.

r facilitating the *emigration of poor orphans and deserted*

children under sixteen years of age, the 13 & 14 V. c. 101, s empowers guardians to expend money in and about the emigra of such children having no settlement, or whose settlement is known, and who are chargeable: but such emigration not to t place without previous consent of the child, signified before just in petty session, and a certificate of such consent, signed by of the justices present, has been transmitted to the Poor Board.

By 14 and 15 V. c. 91, advances may be made out of mo authorized to be advanced for the improvement of landed prop to facilitate the emigration of destitute persons in the Highland Islands of Scotland. Landowners may apply for loans for purpose to the Inclosure Commissioners of England; and if, a inquiries by commissioners, it is found that the requisite pro tion of the expense has been defrayed by applicants, the Trea may direct the issue of a provisional certificate for a loan. I gration commissioners may circulate notices of particulars application.

The 24 & 25 V. c. 80, authorizes advances of money out of consolidated fund, for the employment of the poor, in carrying public works and fisheries, the improvement of harbours, other purposes.

RELIEF AND ALLOWANCE.—Commissioners to make regulat as to the relief to be given to *able-bodied persons out of the w house;* all relief given contrary to such regulations to be disallo but overseers or guardians may, under special circumstances, d the operation of such regulations for thirty days, reporting wi ten days after the cause of such delay to the commissioners. commissioners disapprove of such delay, they may peremptor fix a day from which all relief granted contrary to their regulat shall be disallowed; still, in case of *emergency*, relief may given, provided a report of the same be made to the commissio within fifteen days after, and they approve of such departure f their regulations; or if the relief has been given in food, tem rary lodging, or medicine, and has been reported as mentio 4 W. 4, c 76, s. 52.

Where guardians, select vestries, or similar bodies, have l established under this or any other general or local act, no r is to be given except as directed by them, subject to the contro the commissioners. But in sudden and extreme cases overs may give temporary relief to persons, whether settled or not in parish, in articles of absolute necessity, but not in *money*. overseers neglect or refuse to give such casual relief, justices order it; and overseers disobeying such order liable to penalty £5. Justices may also give an order, under like penalty, medical relief, in case of dangerous illness, s. 54.

In any union formed under the act two justices may order r *to be given out* of the workhouse to any adult person wholly

to work from *old age* or *infirmity of body*; but justices must
y in their order as to inability to work, and the pauper desire
out-door relief, s. 27.
e officials of a workhouse are bound to admit, at all times, all
se who have an order for admission from the competent
rities. These are the board of guardians, relieving officers,
rseers. But in cases of urgent necessity they are bound to
applicants without such order. If the house is full, the
r is bound to refer the applicant to the relieving officer,
duty it is to find relief in other quarters.—*House of Com-
President Villiers, June* 2, 1861.
ters of workhouses and overseers are to keep daily registers
relief to paupers. Relief given to wife or children con-
l relief given to the husband. Husband liable to maintain
ldren of his wife born *before* marriage, whether legitimate
itimate, till they attain the age of sixteen, or till the death
mother; such relief as commissioners may direct to be
ed as a *loan*, for which the wages of the receiver may be
ently attached in the hands of his employer.
arried woman may be relieved, same as a widow, if her
d be beyond sea, in the custody of the law, or confined in a
asylum: but not to affect future liability of husband for
lief, 7 V. c. 101, s. 25. A widow with a child dependent
r, and not having had an illegitimate child since the com-
ent of her widowhood, may be relieved, though not in the
of her legal settlement, s. 26.
3 & 14 V. c. 101. s. 5, an order for paying the whole or
the cost of maintenance of a lunatic married woman, in
atic asylum, and chargeable to any parish, may be made
r husband.
OVEMENT AND RECREATION GROUNDS.—The 23 & 24 V. c.
facilitate local improvements for the health and comfort of
s. In any parish the population of which by last census
500, the ratepayers may hold land, purchase or accept
it, for the purpose of forming any public walk, exercise
ground, or for improving the same, or placing seats and
from rain. After the passing of the act, two-thirds in value
ayers in meeting assembled may impose a separate rate for
r it into effect. But prior to such rate at least one-half of
mated cost of any proposed improvement must have been
by private subscription or donation, but rate not to exceed
he pound, ss. 1-6.
2 V. c. 27 recites that "the want of open public grounds
resort and recreation of adults, and of playgrounds for
n and youth, is much felt in the metropolis and other
e places, and that such evil is steadily increasing." It
acts that land may be conveyed *to trustees for these* pur-
subject to any *conditions the donor or grantor may think* fit.

A form of conveyance is given without need of enrolment or i denture. Any municipal corporation may make such grant wi the consent of the lords of the Treasury. Parish lands may made applicable with the consent of the Poor-law Board. Churc wardens or overseers may be trustees of such lands, and a bo corporate for taking and holding, but the management and directi of the recreation grounds to remain in the persons named in de of conveyance, or in failure of these the charity commissioners England to settle a scheme of management, s. 5. Managers a directors may make and enforce by-laws and regulations for t care and use of the grounds, subject to approval of the commi sioners. Personal property not exceeding £1,000 may be b queathed for the purchase and maintenance of recreation ground The act extends to England and Ireland only.

II. HIRED SERVANTS FROM WORKHOUSES.

For the better protection of *hired servants or female paupe* under *sixteen* years of age, it was enacted by 14 & 15 V. c. 1 (amended by 24 & 25 V. c. 95), that the guardians of every unic or separate parish under a board of guardians, and the overseer of every parish not in union or under guardians, are to keep register of every young person under the age of sixteen hired, taken as a servant, from the workhouse of such union or parish and enter particulars according to schedule; namely, age, nam date of hiring or taking, name of master or mistress, their abod grade, or description; such register to be signed by the chairma of the board of guardians or overseer, and not to supersede regist requisite under 42 G. 3, c. 46, and 7 & 8 V. c. 101, s. 3.

By s. 4, the guardians or overseer, where young persons a hired from workhouse, or bound out as pauper apprentices, a required to cause the relieving officer or other authorized person t visit them twice at least in every year within the union or parish or within five miles of any part thereof, while under the age sixteen, and make a report in writing, if not supplied wit necessary food, or subjected to cruel or illegal treatment in an respect. If the residence of such young person exceed five mile the duties of visitation to be discharged by the parish in whic the residence is, upon notice from the union or parish from whic the young persons have been bound or hired, s. 5.—See *Servant and Apprentices.*

III. REMOVALS OF THE POOR.

No person to be removed from any parish or workhouse til *twenty-one days* after notice of his being chargeable has been sen to the parish to which the order of removal is directed, with a copy of the examination and order; but such person may be remove

directly if the order be submitted to. In case of appeal, no removal to take place till after the determination of the appeal. Notice of appeal to be given fourteen days before first day of sessions. Parish losing appeal to pay costs. Charge of relief from time of notice to be paid by parish adjudged the place of settlement; but relief under suspended order is not recoverable unless notice has been sent of such order. Grounds of appeal to be stated in notice of appeal, and those stated can only be gone into. Appellants to have access to the pauper for the purpose of inquiry concerning his settlement. Either party making frivolous or vexatious statements to pay costs.

In the session of 1846, and again in 1861 and 1864, important alterations were made relative to *removals of the poor*. By the 9 & 10 V. c. 66, the poor were made irremovable after *five* years' residence, but by the act of Mr. Villiers, the 24 & 25 V. c. 55, after March 25, 1862, no person can be removed, nor any warrant granted for removal from any parish in which such person has resided three years (one year by 28 & 29 V. c. 79, s. 8), and residence in *any part of a union* has the same effect as residence in a parish, s. 1. By s. 2, where a *child* under the age of sixteen years, residing with its surviving parent, is left an orphan, and the parent, at the time of death, had acquired an exemption from removal, such orphan, if not otherwise irremovable, is exempt from removal, same as if it had acquired for itself exemption from removal by residence. When a *married woman* has been deserted by her husband, and after his desertion resides for three years in such a manner as would, if she were a widow, render her exempt from removal, she is not liable to be removed from the parish where resident unless her husband return to cohabit with her, s. 3.

By s. 4, if any *wayfarer*, wanderer, or foundling become chargeable upon the common fund of any union, the cost of the relief of such shall continue to be charged upon the fund until relief be discontinued. Persons chargeable upon the fund by reason of some accident or sickness which will not produce permanent disability; the charge to cease when the person is cured, and thenceforth if the relief continue; the cost is chargeable to the parish where the poor person is then residing, unless he be in the workhouse of the union; in such case it is chargeable to the parish where he was residing when removed to the workhouse, and the overseers of the parish may apply for and obtain an order of removal, s. 5.

By 28 & 29 V. c. 79, s. 1, the expenses of the poor, such as burial, vaccination, and registration expenses, are to be charged upon the common fund of the union, and by s. 7, a penalty is inflicted on paupers who may return or become chargeable upon the union again after the order for removal.

The costs of the examination of any *lunatic pauper*, present or future, of his removal to and from, and his maintenance in, any asylum, licensed house, or registered hospital, who would, under

16 & 17 V. c. 97, be chargeable to a parish in a union, are from March 25, 1862, to be borne by the common fund of the union comprising such parish. Orders in lunacy may be obtained by, or appealed against by, boards of guardians, s. 7. The temporary charges under 10 & 11 V. c. 110, of certain union paupers for relief, burial, and maintenance on the common fund made perpetual, s. 8. Parishes comprised in any union formed under 4 & 5 W. 4, c. 76, to contribute to common fund according to the annual value of rateable property, but not to apply to contributions in arrear on the said 25th of March, s. 9. Guardians, in computing the amount of contribution to the common fund from the several parishes, to take the annual rateable value of property in every parish from the valuation assessed to the county rate, or where there is no county rate, to the borough or ward rate, or other rate in the nature of the county rate in the last assessment made not less than one month previously, s. 10. No order to be deemed void from error of calculation, s. 11; and by 33 & 34 V. c. 48, the Poor Law (now the Local Government) Board, is given power to define cases in which guardians may pay the expense of conveying paupers.

By 9 & 10 V. c. 66, explained by 11 & 12 V. c. 111, s. 1, wife or children are removable only with husband or parents. No widow who was living with her husband at the time of his decease is liable to be removed till twelve months after the death of her husband. No child, legitimate or not, under sixteen years of age, can be removed without its parent. No person becoming chargeable in respect of relief, made necessary by sickness or accident, can be removed unless the justice granting the warrant shall state in such warrant that he is satisfied that the sickness or accident will produce permanent disability. No person to acquire a settlement by exemption from liability to removal. Any officer of a parish or union, by money, promise, or other contrivance, procuring the removal of any poor person, by which such poor person becomes chargeable to another parish, is liable to a penalty not exceeding £5 nor less than 40*s*. The delivery of a pauper under any warrant of removal directed to the overseers at the workhouse of any parish, to any officer of such workhouse, is deemed a delivery to the overseer of such parish.

The 11 & 12 V. c. 110, enables the guardians to obtain orders of maintenance upon *relations* in respect of irremovable poor, to expend money for them as overseers or churchwardens could have done, and to recover in the county court relief advanced by way of loan on their behalf, or on behalf of any parish, but retains the existing remedy already provided by law for the recovery of the same.

By s. 5, the guardians of any union or parish may assist the emigration of poor persons rendered irremovable by 9 & 10 V. c. 66, though not settled therein, the costs to be charged on the

common fund of the union. The charges imposed on the common fund to be charged as union expenses under 4 & 5 W. 4, c. 76.

For the *safe and better conveyance of removals* to their destination, 25 & 26 V. c. 113, enacts that no application for a warrant ordering the removal from any place in England to Scotland, or in Scotland to England or Ireland, of any poor person who has become chargeable in such place, shall be heard in England, except by two or more justices in petty sessions assembled, or by a stipendiary magistrate or a metropolitan police magistrate sitting in his court; and in Scotland except by the sheriff or any two justices of the peace of the county in which the parish is situated to which such poor person may have become chargeable, which justices or magistrate, and sheriff or justices, shall see such poor person, or the person who is the head of the family proposed to be removed, and be satisfied that every person is in such a state of health as not to be liable to suffer bodily or mental injury by the removal. Warrant to be granted only on application of relieving or other officer, and to contain the name and age of every person, with other particulars of health and past residence, s. 2. Copy of warrant to be sent to parochial board or clerk of union to which removal is to be made. Penalty of £10 on not receiving poor persons named in warrant. Women and children under the age of fourteen not to be removed as deck passengers from October 1 to March 31, s. 7.

Doubts having arisen in respect of residence under the acts relating to removal, the 27 & 28 V. c. 105, explains, that in the case of any poor person heretofore chargeable or becoming chargeable in any parish comprised in a union, not being the parish of his settlement, the period of time during which he shall have resided in the parish of his settlement, if in the same union, shall not be included in the computation of the time of residence required to render him exempt from removal under the statutes referred to.

IV. PARISH SETTLEMENT.

Since 1834, no settlement can be acquired by *hiring and service*; nor by serving a *parochial office*; nor by *occupying a tenement*, unless assessed to and paying the poor rate for one year; nor by possessing *an estate* or interest in a parish, only so long as the possessor inhabit within ten miles thereof; nor by being apprenticed to the *sea service*, 2 & 5 W. 4, c. 76, ss. 64–68.

Contracts for hiring and service entered into, but not completed at the passing of the act, will not give a settlement; nor a current but unexpired apprenticeship to the sea service, ss. 65–67.

The modes of acquiring a settlement untouched by the new act are—1. By *birth*. 2. By *parentage*. 3. By *marriage*. 4. By *apprenticeship* under 3 W. & M. c. 11.

1. The place of *birth* is, *prima facie*, the place of settlement, 6 *T. R.* 653. Therefore, a bastard, having in law no father, is

settled in the place of birth, unless he derived a settlement from his mother. But bastards born after August 14, 1834, follow the settlement of the mother until they attain the age of sixteen, or acquire a settlement in their own right, 4 & 5 W. 4, c. 76, s. 71.

2. Legitimate children are settled in the parish where their *parents* are settled, till they get a new settlement for themselves. If the parents acquire a new settlement, the children also follow, and belong to the last settlement of the father; or, after the death of the father, to the last settlement of the mother while she is unmarried, or till the child attain maturity and acquire a settlement.

3. A new settlement may be acquired by *marriage*. For a woman marrying a man who is settled in another parish changes her maiden settlement; the law not permitting the separation of husband and wife. A wife can gain no settlement separate from the husband during coverture. Hence the judges have decided, *Rex* v. *Leeds*, 4 *B. & Ald.*, that an Englishwoman marrying a native of Scotland or Ireland, loses all claim to parochial relief in England, and in the event of being distressed or chargeable, may be passed to the country where her husband was born; or, in case of desertion by the husband, she may be removed to the parish in which she was settled before marriage, 7 *B. & C.* 615.

4. Being bound *apprentice* gives a settlement where the last forty days were served.

Of the remaining modes of acquiring a settlement, by occupying a tenement of £10 yearly value, and by estate,—the first, as before mentioned, is only valid when the rates have been assessed and paid for one year, and the second when coupled with residence within ten miles. As respects the ownership of an estate, the value, however small, gives a settlement, provided it be acquired by *act of law*; that is, if by devise, gift, or dowry, it is a settlement; but if a man acquire it by his own act, as by purchase, then, unless the consideration advanced be £30, it is no settlement for any longer time than the person shall reside thereon.

With the view of preventing needless litigation, two cardinal and settled propositions of law may be usefully stated. *First*, that a subsequent always abrogates a prior settlement gained by the same person; and this forms the only means by which a settlement once acquired can be destroyed. The *second* point is, that no settlement can be legal which is brought about by *fraud* or *compulsion*.

Relief of Casual Poor.—The rights of this class of poor under the settlement laws are thus defined by the poor-law commissioners, in their report for 1846:—"The laws relating to the relief of the poor confer a right to relief *irrespective of settlement*. All *destitute* persons have a right to be relieved at the cost of the parish in which they are. This right, in the first instance, is absolute; but if a person so relieved has a settlement in another

parish, the officers of the parish to which he has become chargeable can, if they think fit, remove him to the place of his settlement. According, therefore, to the established law, a wandering poor person who applies for relief in a parish, metropolitan or rural, although he has not acquired any settlement in it, must, if he be destitute, there receive parochial relief." The commissioners further declare, "That the obligation imposed by the existing law to relieve wanderers and houseless strangers applying for relief on account of destitution in a parish in which they have not a settlement, is unquestionable." This obligation extends equally over all parts of the country, and is binding upon rural not less than metropolitan parishes. Before the interference of the poor-law commissioners in the years 1837, 1838, and 1839, it was a general practice in the metropolitan parishes to refuse relief to wanderers on the ground that they had no settlement in the parish. This practice has to a considerable extent been changed in consequence of the measures taken by the commissioners, and less distinction has been made between settled and other poor with respect to relief. But the measures taken by the commissioners altered, not the law, but the practice which had been wrongly established in the London parishes, and brought the practice into accordance with the law.

BURIAL OF PAUPERS.—Paupers must be buried in the place where they die, or are found, and the expense charged to their parish; unless they or their relations have expressed a wish to be buried in their own parish. Burials to be in the churchyard or other consecrated ground, and fees of burial to be paid out of the poor rates. Poor-law officers recovering money, or deriving any emolument from the burial of a pauper, or the sale of the body for anatomical purposes, subject to a penalty not exceeding £5, 7 V. c. 101, s. 31.

By 13 & 14 V. c. 101, the guardians of any parish or union may, subject to the approval of the Poor-law Board, contribute out of the poor rates or common fund towards the enlargement of any churchyard or consecrated burial-ground wherein the workhouse is situated, or any other parish of the union, and may bury therein any person dying in the workhouse, provided the relatives of the deceased do not object.

V. BASTARDY.

7 & 8 V. c. 101 (amended and greatly altered by the Bastardy Law Amendment Act, 1872, 35 & 36 V. c. 65) deals with the treatment of bastard children.

By 35 & 36 V. c. 65, the putative father of a bastard child born after the 10th of August, 1872, may be summoned to petty sessions on application by the mother of the child, and the justices in petty sessions may make an order on the putative father for the payment to the mother, or to any person who may be appointed to

have the custody of such child, of a sum of money weekly not exceeding five shillings a week, for the maintenance and education, and for the expenses incidental to the birth of such child, and for the funeral expenses of such child, until such child has attained the age of thirteen years or has died: Provided, that the justices may in the order direct that the payments are to continue till the child is sixteen years of age, in which case the payments shall so continue.

By 7 & 8 V. c. 101, ss. 4, 5, and 8, justices may adjourn the hearing of bastardy cases as often as may seem fit. No order will be made unless applied for within forty days from the service of the summons after birth. Putative father may appeal to the quarter sessions by giving notice to the mother within twenty-four hours after the adjudication and order, and within seven days after giving sufficient security for costs.

Money under the order must be paid to the *mother*, unless she be of unsound mind, imprisoned, or transported; in case of death of mother or incapacity, money to be paid to person appointed by justices to have custody of the child. Order for payment to be in force only till the child has attained the age of thirteen years, or till its death, or death of the mother.

Any woman deserting or neglecting to maintain her bastard, who is able to maintain it, whereby it becomes chargeable, may be punished as a rogue and a vagabond.

Parish officers who seek to promote the marriage of the mother of a bastard are guilty of a misdemeanour, and the person appointed to have the care of a bastard, misapplying the money for its use, withholding from it proper nourishment, or otherwise ill-treating the child, is liable to a penalty of £10, s. 8.

This act is explained by 8 V. c. 10, and enables the mother, where an order has been quashed for defect in form, to apply again within six months. In appeals, the mother may be examined; the parties may be heard by counsel or attorney; in default of sufficient distress, the father may be committed to prison.

A man marrying a woman with an illegitimate child is bound to maintain it, same as if legitimate, till it attain the age of sixteen.

VI. DISTRICT ASYLUMS FOR PAUPERS.

For the temporary relief of poor persons found destitute and without lodging, within the district of the metropolitan police, or the city of London or in the boroughs of Liverpool, Manchester, Bristol, Leeds, and Birmingham; and for avoiding the introduction of infectious diseases into the regular workhouses, the commissioners may, by 13 & 14 V. c. 101, form district asylums for the relief and setting to work of destitute houseless poor who are not charged with any offence, and who apply for relief, or become chargeable to the poor rates.

Any poor person found destitute, and not professing to be settled in any parish within the district, admissible into the asylum for temporary relief and work. Constables to conduct the destitute to the asylum for the houseless.

Poor persons relieved with food and lodging for the night cannot be detained against their will longer than the breakfast hour, and four hours after, unless they have become lawfully punishable for misbehaviour. Persons relieved in asylums are subject to and incur the same liabilities as if in or relieved in a workhouse. Establishment of an asylum does not exonerate guardians, overseers, or relieving officers, from existing obligations to grant prompt relief to the poor in cases of sudden and urgent necessity.

VII. PARISH VESTRIES.

Every parishioner who has paid his rate can attend a vestry, and all matters submitted to the vestry must be decided by a majority of votes.

By the 58 G. 3, c. 69, no meeting of the inhabitants in vestry shall be held unless at least three days' previous notice has been given. But by 1 V. c. 45, no public notice for a vestry meeting or any other matter shall be given in any *church* or *chapel* during or after divine service, or at the door of any church or chapel at the conclusion of divine service. Notices heretofore usually given during or after divine service, &c., to be affixed to the church doors instead. Notices for holding vestries to be signed by a churchwarden of the church or chapel, or by the rector, vicar, or curate of such parish, or by an overseer of the poor of such parish. Decrees, &c., not to be read in churches. But the act not to extend to banns, nor to various notices connected with divine service.

The 13 and 14 V. c. 57, prohibits the holding of vestry or other parochial meeting in the parish church or chapel "as productive of scandal to religion," in places where the population exceeds 2,000, on application to the Poor-law Board by the churchwardens, pursuant to a resolution of the vestry of the parish. After the publication of the order of the poor-law commissioners, and with their sanction and a majority of the vestry, other places may be provided within the parish for vestry or other usual meeting. By s. 6, in parishes with a population exceeding 2,000, the election and payment of the vestry clerk may be regulated on application by an order of the commissioners. Vestry clerk elected conformably with such order not to be removable except by resolution of vestry and consent of Poor-law (now the Local Government) Board; s. 7 specifies the duties of the vestry clerk. Salary of vestry clerk to be fixed by the commissioners.

At a vestry meeting every inhabitant, whose poor assessment is less than £50, is entitled to give one vote; amounting to £50 or upwards, he is entitled to one vote for every £25 above that sum; provided that no inhabitant shall be entitled to more than six votes, 58 G. 3, c. 69, s. 3.

If the rector, vicar, or perpetual curate is not present at a vestry, a chairman may be appointed, by plurality of votes; and in case of equality of votes on any occasion, the chairman, in addition to the votes he may have in right of his assessment, is to have the casting vote.

The determination of the major part of the parishioners assembled in vestry binds the whole parish; and as respects the validity of the proceedings, it is immaterial how few persons attend, if due notice has been given of holding it.

Under the poor-law acts "*vestry*," means any open, customary, or select vestry, or any meeting of inhabitants convened by any notice, such as would have been required for the assembling of a meeting in vestry, at which meeting business relative to the poor, or the rates, shall be transacted or taken into consideration, 4 & 5 W. 4, c. 76, s. 109.

The sections in 58 G. 3, c. 69, and 59 G. 3, c. 85, which disqualified persons from voting in vestries who had not paid their rates, have been modified by 16 and 17 V. c. 65, enacting that "no person shall be required, in order to be entitled to vote or be present at any vestry meeting held under the same acts, to have paid any rate for the relief of the poor, which shall have been made or become due within *three calendar months* immediately preceding such vestry meeting."

By Hobhouse's Vestry Act, the 1 & 2 W. 4, c. 60, parishioners are empowered to alter the constitution of their vestries, and appoint auditors of accounts; and this act may be adopted in any parish in England and Wales, subject to certain regulations and exceptions, which will be mentioned. One-fifth of the ratepayers, or any number amounting to *fifty*, may, between December 1st and March 1st, present a requisition, with their names and abodes, to one or more of the churchwardens, requiring them to call a meeting to ascertain whether a majority of the ratepayers are favourable to the adoption of the act. Upon receipt of the requisition, and first Sunday after, public notice to be given on the door of every church or chapel of the Establishment, specifying a place and day, not earlier than ten, nor later than twenty-one days, for the ratepayers to signify, by their votes, for or against the adoption of the act; the votes to be taken on three successive days, between the hours of eight in the morning and four in the afternoon. A *majority* of the ratepayers must vote, and two-thirds of them voting in favour of the act, it is to be declared adopted. Ratepayers not to vote, unless *rated for one year*, and paid all parochial rates made six

months preceding the day of voting. Vestry to consist of not less than 12 resident householders, where the rated householders do not exceed 1,000; if they exceed 1,000, 24 vestrymen to be chosen; if they exceed 2,000, 36 vestrymen to be chosen; and so on, at the rate of 12 additional vestrymen for every 1,000 rated householders; but the number of vestrymen in no case to exceed 120, unless where a great number has been fixed by special act of parliament. This act also regulates the election of auditors, and the management of charities, but it is not to extend to any parish where there are not more than 800 ratepayers, except such parish is within or part of any city or town. Vestries elected under it may direct the mode of parish relief, subject to the guidance of the poor-law commissioners.

This act is repealed in respect of parishes in the metropolis by the Local Management Act of 1855, the 18 & 19 V. c. 120.

VIII. ASSESSMENT OF THE POOR RATE.

The poor rate is a charge imposed by the 43 Eliz. c. 2, which involves two principles: 1st, that every poor person shall be either relieved or provided with work; 2nd, that this shall be done parochially. Every description of property lying within the parish, whether real or personal, which has an occupier, and from which a *yearly* profit arises, is rateable. The power of making the rate belongs to the churchwardens and overseers, or the major part of them; and, though it is more conciliatory, it is not necessary for this purpose that they should have the concurrence of the inhabitants, either in vestry or otherwise.

A farmer is not rateable for his stock, though a tradesman is for his stock in trade, if its value can be ascertained, 6. *T. R.* 154. But the inconvenience of rating stock in trade caused the power to be suspended for a year by 3 & 4 V. c. 89, and ever since this act has been continued by annual statutes.

By 3 W. 4, c. 30, all churches, chapels, meeting-houses, or premises *exclusively* appropriated to public religious worship, are exempt from poor and church rates. Using such places for a Sunday or infant school is not a secular appropriation rendering them liable to assessment, and by 32 & 33 V. c. 40, all Sunday and ragged schools may be exempted from poor rate.

Tolls taken on a river are liable to the poor rate, as well as tolls taken in corporations.

Ships are rateable in the parish to which they belong.

Hospital lands are chargeable to the poor, though the hospital itself is exempt.

Ale-houses having no *legal* occupier, are not taxable as such under the poor laws.

Money in a man's house or possession is not rateable; but per-

sonal property, if visible, and yielding a permanent annual profit, is rateable, 1 *T. R.* 727.

The possessions of the crown are not rateable, *Amherst* v. *Somers*, 2 *T. R.* 372 ; but this exemption does not extend to such property occupied by the servants of the crown, and of which they have a beneficial enjoyment.

Coal and slate mines are rateable, but iron and lead mines are exempt.

Church tithe and glebe are rateable.

Water and gas companies are rateable ; so are railroads ; and in general, all property the amount of which is ascertainable, and of which the owner has a beneficial enjoyment, is rateable to the poor.

In assessing rates, it is the occupier of the premises, not the lessor or landlord, who is liable to the payment. But by the 59 G. 3, c. 12, a parish vestry may direct that the *owner* or *lessor* of houses or dwellings, the rent of which does not exceed £20, nor is less than £6, and which are let for any term less than a year, may, in respect to such houses or dwellings, be assessed to the poor rate instead of the occupier. The goods of such occupier may be distrained for the rates to the amount of the rent actually due ; and the occupier, paying the rates is empowered to deduct the amount from his rent.

Under the 54 G. 3, c. 170, two or more justices may, on proof on oath of inability to pay, and with consent of parish officers, exonerate any poor person from the payment of the rate, and strike out his name from the assessment.

By 20 V. c. 19, all *extra-parochial places* where no poor rate is levied, are to be parishes for the relief of the poor, and justices have jurisdiction to appoint overseers. Provisions are made for the Inns of court and the Charter-house. If extra-parochial place has a church or chapel of the Church of England, the bishop may authorize the publication of banns and the solemnization of marriage therein, ss. 9, 10.

By 6 & 7 W. 4, c. 96, provision is made for introducing a uniform mode of making rates for the relief of the poor. The poor rate to be made upon an estimate of the *net annual value* of the property rateable ; that is to say, of the rent at which it may be reasonably expected to let, after deducting the usual tenants' rates, taxes, and charges ; but not to alter the relative liabilities of property as heretofore assessed. Upon a representation from the board of guardians, or a majority of the churchwardens and overseers, the comissioners may direct a new survey and valuation upon the principle of the act. Appeals against a poor rate may also by this act (s. 6) be preferred to the justices in petty sessions, who shall four times at least in every year hold a special sessions for poor rate appeals within their respective divisions, and their de-

claim to be conclusive unless notice of appeal to the next general or quarter sessions be given within fourteen days.

By 25 & 26 V. c. 103, more effectual provision is made for securing uniform and correct valuations of parishes in the unions of England. The board of guardians of every union under 4 & 5 W. 4, c. 76, at first meeting after the annual election to appoint from among themselves not less than six nor above twelve, consisting partly of *ex officio*, and partly of elected guardians, to be an assessment committee for the investigation of the valuation of the union. One-third of the committee, if possible, to be *ex officio* guardians. Where union has same boundaries as a municipal borough, names of assessment committee to be transmitted to town council, who may appoint additional members. Board of guardians to appoint first meeting of the committee, and a guardian may be present at any meeting, but not take part in proceedings. Proceedings to be entered in books, and signed by chairman, and the board report the proceedings of its assessment committee every April. A majority of committee to be a quorum. Committee may require returns from overseers, and the production of rates and taxes, and examine persons attending before them, s. 13. Overseers to prepare valuation lists, and the gross estimated rental for the purpose of the valuation list to be the rent at which the hereditament might reasonably be expected to let, free of all usual tenants' rates and taxes, tithe commutation, and rent charge, s. 15.

By s. 16, committee may enlarge time for making valuation lists, and appoint persons to make the same. Valuation list to be deposited by overseers with rate books for inspection by persons assessed to relief of the poor. Overseers of any parish, or any person, if aggrieved by the valuation list, may object to its correctness, and give notice in writing thereof. Committee to hold meetings to hear objections, and the board of guardians direct further valuations, ss. 19, 20. Valuations when approved to be delivered to the overseer; and in case any ratepayer shall appeal under the existing law to special or quarter sessions against any poor rate in any parish, and the result shall be to amend such rate, then the valuation list is to be altered in conformity with the decision so made, s. 22. Supplemental valuation lists may be prepared in cases of additions or alterations in the rateable property of the parish, s. 26.

Remaining sections refer to places under local acts, to appeals against valuations, and compensation for returns and expenses.

This act is amended by 27 & 28 V. c. 39, in regard to appeals, and makes further provision for securing correct and uniform valuation of property liable to be assessed. Appellant to give 21 days' notice in writing previous to the special or quarter sessions to which an appeal is to be made, to the assessment committee of the union, and committee, with consent of guardians of

the union, may appear as co-respondent, s. 2. Any overseer who wilfully omits to make the declaration required by the act of 1862, or makes the same falsely, liable to a penalty not exceeding £5 on summary conviction before two justices.

In 1869, by an act (32 & 33 V. c. 67) to provide for uniformity in the assessment of rateable property in the metropolis, the above acts (6 & 7 W. 4, c. 96, 25 & 26 V. c. 103, and 27 & 28 V. c. 39) were repealed as to the metropolis, and various rules as to the valuation of metropolitan property and appeals from such valuation were enacted.

By 25 & 26 V. c. 82, where any number of local rates and taxes are due from the same person, the rates and taxes so due may be included in the same information, summons, or other document required to be laid before justices, or to be issued by justices; and every such document shall, as respects each rate or tax comprised in it, be construed as a separate document, and its invalidity as respects any rate or tax shall not affect its validity as respects any other rate or tax comprised in it.

The 28 & 29 V. c. 79, provides for the better distribution of the charge for the relief of the poor by the repeal of so much of 4 & 5 W. 4, c. 76, as required parishes in union under that act to defray the expense of their own poor. From March 25, 1866, all the cost of relief to the poor and the burial of the dead under the direction of the guardians or their officer, and charges incurred by the guardians in respect of vaccination and registration fees, to be charged on the common fund of the union. A pauper relieved in such union, if settled in a parish of another union, the guardians may order his removal to the union to which he is chargeable, s. 2. Guardians of respective parishes may defend and appeal against such removal with the like incidents as removals by overseers. Guardians may remove without orders where there is consent. Pauper removed and returning within twelve months to the union from which he has been removed, punishable as an idle and disorderly person, under 5 G. 4, c. 83. By s. 8, one year to be substituted for the three years under 24 & 25 V. c. 55, s. 1. Cost of prosecutions to be charged on the common fund. Last residence of a poor person dying in a workhouse to be his place of burial, s. 10 By s. 12, the guardians to distribute the charges upon the common fund during and at the close of every half-year in the proportions according to which the orders for the contributions to the common fund were made upon the several parishes comprised in such unions at the commencement of such half-year, notwithstanding the change which may be made in the valuation list of any parish during such period. In other respects the settlement unaltered. Unions under local acts may avail themselves of this act.

By the Poor Rate and Assessment Act, 1869 (32 & 33 V. c. 41), which does not extend to Scotland or Ireland, 13 & 14 V. c. 99, is

repealed, so far as applies to poor rate, and occupiers of tenements let for short terms may deduct the poor rate paid by them from their rents. In certain cases of small tenements the owners may agree with the overseers to become liable for the poor rates, and in such case they may be allowed a commission not exceeding twenty-five per cent. on the amount of the rate. The vestries may order the owner to be rated instead of the occupier, and in such case shall allow an abatement of fifteen per cent.

When an owner, who has become liable to pay the poor rate, omits to do so, the occupiers paying the same may deduct the amount from the rent. The owners may make the poor rate payable by instalments. The owner may appeal against any payment of rates which he has become liable to pay.

IX. HOUSELESS POOR OF THE METROPOLIS.

An act of 1864, the 27 & 28 V. c. 116, enacts that, where no adequate accommodation exists, the guardians of every union or parish, situated either wholly or in part within the metropolis, shall provide such wards or other places of reception for destitute wayfarers and foundlings, as the Poor-law (now the Local Government) Board shall direct. The provisions of this act relating to the reimbursement by the metropolitan board were repealed by 30 & 31 V. c. 6, s. 60.

An act (28 & 29 V. c. 34) passed in the year 1865 continues the 27 & 28 V. c. 116, and enacts that the Poor-law Board are to cause wards and places of reception to be inspected not less than once in every four months, between 6 in the evening and 8 in the morning from October to March, and from 8 in the evening to 8 in the morning from April to September, and they may revoke or renew the certificates according to the results reported. The board may allow a sum in gross for the cost and expenses, instead of a sum for each pauper as provided in the previous act. A constable of the metropolitan police, or of the police of the city of London, may personally conduct any destitute person not being charged with any offence punishable by law within the knowledge of such constable, to any ward or other place of reception approved of by the board; and every such person shall, if there be room in such ward or place of reception, be temporarily relieved therein. The wards are to be open at the hours mentioned for inspection.

The rateable value of the property in the metropolis is now (1873) considered to be about twenty-five millions sterling.

The Metropolitan Poor Act 1867 (30 & 31 V. c. 6), which extends only to the metropolis, directs how asylums for the relief of the sick, insane, or infirm, or other classes of the poor shall be provided; and it provides for the formation of districts, the

number of asylums, the constitution and election of a body of managers of asylums, and their powers, as to acquiring land, and raising money, &c.

This act enables the Poor-law (now the Local Government) Board to build dispensaries, and appoint district medical officers, and otherwise to make arrangements for giving out-door medical relief.

Asylums for the sick and lunatic, medical relief, dispensaries, district schools, and training ships, contributions of unions and parishes and the control of the Poor-law (now the Local Government) Board, are also dealt with in the following acts, 31 & 32 V. c. 122, ss. 11, 35; 32 & 33 V. c. 63 & 67, s. 47, and c. 102, s. 37; 34 & 35 V. cc. 15 & 108.

X. CHURCHWARDENS.

Churchwardens are chosen annually, on the 28th March, or within fourteen days next after, either by the minister, the parish, or both together, as custom or statute directs. They represent the body of the parish, and are appointed to look after the church, and observe the behaviour of the parishioners, in such matters as appertain to ecclesiastical censure and jurisdiction.

The usual mode of choosing churchwardens is, for those in office to nominate two persons to succeed them; but this mode is not exclusive of other methods, and, though customary, is not absolutely necessary. The regular mode of proceeding in their appointment is by poll; but Sir John Palmer, in *Nicoll* v. *Roffey*, expressed a doubt whether a poll, though demanded, must be granted.

Until a churchwarden has taken the oath of office at the next visitation after his election, he cannot act in his official capacity, nor have any power to make or levy any rate, or reimburse himself for any money advanced to the parish, or do any other act in virtue of his parochial functions.

Generally speaking, all the inhabitants of the parish are liable to serve in the office, except peers and members of parliament, clergymen, barristers, attorneys, physicians, surgeons, aldermen, officers of the customs, and other persons whose avocations require constant personal attendance; aliens, papists, Jews, dissenting preachers, and persons living out of the parish are disqualified.

The duties of the office are to bind out poor children as apprentices; to collect and disburse assessments, made by the parishoners, for the repair of the church; to keep the keys of the belfry, and take care the bells are rung only on proper occasions; during a vacancy of the benefice, to observe that the church is properly aired and kept clean, and in good repair; to provide all requisites for the communion service, christenings, and other ceremonies; to prevent indecent or disorderly behaviour at church, for which purpose they may, without being guilty of an assault, take off a person's hat, or

even turn him out of the church; to maintain a due observance of the Lord's day by shopkeepers and others, and prevent all tippling in ale-houses during the hours of divine service; to assist the overseers in making out the list of persons qualified to serve on juries; to cause dead human bodies, cast on shore, to be decently interred; to apprehend and safely secure all lunatics and insane persons; to see that the parson does his duty according to the rites of the Church of England; and to see that the minister enters in the register all weddings and other matters required by the Registration Act; and to give public and proper notice to the parishioners of the holding of vestries.

Churchwardens are also required to see to the making of the church rates, by which the expenses of the church are to be defrayed. These rates are charged on all lands and houses in the parish, are assessed on the occupiers, and are made by the majority of the parishioners present at a vestry summoned for that purpose by the churchwardens. In 1868 an act (31 & 32 V. c. 109) was passed which enacts that church rates shall no longer be compulsory on the persons rated, but it provides that any person refusing to pay them shall be disqualified from interfering with the moneys raised by the rates.

The churchwardens have such special property in the organ, bells, parish books, Bible, surplice and chalice, that they may bring an action, in their joint names, for any damage they sustain.

The SEATS of the church, being fixed to the freehold, are the common property of all the parishioners who contribute to the repair of the church; and the churchwardens, alone, cannot dispose of them; nor the churchwardens and rector, jointly, without consent of the ordinary, except by special custom, as in London, where they are at the disposal of the churchwardens, under the control of the parish.

The seating and arranging the parishioners in the church is vested in the churchwardens, in doing which they are to consult the general accommodation; for though the parishioners have a claim to be seated according to their rank and station, the churchwardens are not, in making the classification, to overlook the claims of all the parishioners to be seated, if sittings can be obtained for them, 1 *Hagg*, 314. And no power but the legislature can deprive the inhabitants of their general right in this particular.

A seat, or priority in a seat, in the body of the church, may be held by custom as belonging to a *house*, if it has been used or repaired, time out of mind, by the inhabitants of such house; it cannot be claimed by right of land; it must be claimed as belonging to the house in respect of the inhabitancy. It must also be prescribed for as appurtenant to a house out of the parish, *Lonsley* v. *Hayward*, 1 *Y. & J.* 583.

Trespass will not lie for entering into a pew; because the plaintiff has not the exclusive possession, the possession of the church

being in the parson, 1 *T. R.* 43. Dr. Phillimore, in giving judgment on a case arising out of a dispute about pews in a parish church, observed that both before and since the Reformation the use of the parish church had been by law free to the parishioners. Since the Reformation, fixed seats had been introduced in place of the movable ones which had been formerly in use; and these seats, with some peculiar exceptions, had been in the disposition of the ordinary, who exercised his authority through the churchwardens, they being his officers as well as those of the parish, and subject to the Consistorial courts. These courts had long since decided the following points:—1. That there can be no property in seats, the sale and lease of them being strictly illegal. 2. That all private rights in seats must be held by a faculty, or a prescription, which supposes the previous grant of a faculty. 3. There was a possessory right, which was not good against the ordinary, but sufficient to enable the possessor to maintain a suit against a mere disturber.

By the Church Seats Act, 1872 (35 & 36 V. c. 49), the Ecclesiastical Commissioners may accept a church site under grant, in which it is declared that pews or seats are not to be let, or some specified portion of them; and therefore it shall be unlawful to let the same, or portion of the same, provided that a stipend of at least £100 per annum shall be secured to the incumbent.

The pulpit is the property of the parson, and the churchwardens cannot let any other minister have the use of it without consent of the incumbent.

Every churchwarden is an overseer of the poor, by 43 Eliz. c. 2; and is so considered under the 4 & 5 W. 4, c. 76, s. 109, so far as he is authorized or required to act in the management of the poor, or of the poor rate.

By the Places of Worship Sites Act, 1873, 36 & 37 V. c. 50, any persons seised in fee simple, fee tail, or for life, or lives of or to any manor or lands of freehold tenure, and having the beneficial interest therein, may convey the land to be used as sites for places of worship, and for the residence of the minister, provided that the person next entitled, in case of land held for life or lives, joins in the conveyance. If the land cease to be used for such purpose it is then to revert. Persons who have not the legal estate, or persons under other disabilities, are empowered to convey lands for the purposes of the act. The Ecclesiastical Commissioners are also empowered to accept trusts. This act does not extend to Ireland or Scotland.

Under the Church Building Act, 58 G. 3, c. 45, two churchwardens of each new church are to be chosen, one by the incumbent, the other by the parishioners. Churchwardens and overseers, within ten days after nomination, to deliver to their successors their *accounts*, and all moneys, goods, and things appertaining to their office; such accounts to be verified before a justice, who shall sign and attest the same, 17 G. 2, c. 38, s. 1. By 50 G. 3, c. 49, s. 1, such accounts must be submitted to two or more county justices

in petty sessions within fourteen days; and such justices may disallow any charges they think unfounded, and reduce such as appear exorbitant. Refusing to submit such accounts, to verify them on oath, or to deliver up moneys and goods, subjects to imprisonment and distress for arrears. But officers may appeal to quarter sessions against any disallowance or reduction of their charges, s. 2.

XI. OVERSEERS.

The exemptions from serving the office of overseer are the same as those of churchwarden; and, indeed, the exemptions there specified extend to all parochial offices.

A woman may be appointed overseer of the poor, 2 *T. R.* 395.

Overseers are chosen by two or more justices from among the resident householders paying the poor assessment; they must be substantial householders, and such must be expressed in their appointment. They are usually adopted by the justices, from a *list* nominated by the parishioners assembled in vestry, those at the head of the list being mostly chosen. In the city of London the appointment by one alderman is sufficient. By 54 G. 3, c. 91, they are to be appointed on the 25th of March, or within fourteen days next after.

Some doubts having arisen as to the proper authority for the appointment of *overseers* of the poor in certain parishes comprised within certain cities and boroughs under 43 Eliz. c. 2, the 12 V. c. 8 enacts, that justices having jurisdiction in such cities and boroughs shall have the *exclusive right* of appointing overseers therein, same as the justices of any county have in respect of the overseers of parishes within the county. The act also repeals so much of the 43 Eliz. as subjects the mayor, aldermen, and head officer of any city, town, or place corporate to a penalty of £5 upon default of the nomination of overseers. The act does not apply to the city of London, or places with local acts.

Further, doubts having been entertained as to the coequal jurisdiction of city and borough justices and county justices, under 43 Eliz. c. 2, in certain matters relating to the poor, they are removed by the 12 & 13 V. c. 64, enacting that all powers which may be exercised out of general or quarter sessions by two or more county justices, may be exercised by two or more city or borough justices having jurisdiction therein. The provisions of these two acts, of 12 & 13 V., are explained by 15 & 16 V. c. 38.

By 12 & 13 V. c. 103, no person is to be appointed overseer who is directly or indirectly concerned in any contract for the supply of goods, materials, or provisions for the workhouse, or for the relief of the poor of the parish, or of the union comprising such parish.

The duties of overseers consist, first, in raising, by rate on the inhabitants, the sums necessary for the relief of the poor, impotent,

old, blind, lame, and such others as are not able to work; and in providing a stock of hemp, flax, wool, thread, iron, and other necessary ware for setting the poor to work. Secondly, in apprenticing poor children, and setting to work the children of parents unable to maintain them. Lastly, in setting to work all persons, married or unmarried, having no means to maintain them, and who use no ordinary and daily trade of life to get their living by, 43 Eliz. c. 2, ss. 1, 2.

Overseers, in granting relief to the poor, are entirely under the direction of the guardians, vestry, or other governing authority; they have no discretionary power in granting relief, except in extreme emergencies, and in no case in *money*.

Under 2 & 3 V. c. 84, in case the contribution by overseers or other officers of any parish, of moneys required by the board of guardians is *in arrear*, two justices may, by warrant, on application from the chairman of the board, cause the amount of the contribution in arrear to be levied on the overseer or officers, and recovered from *them* in like manner as money assessed for the relief of the poor may be levied and recovered. Collectors of the rates, appointed pursuant to an order of the poor-law commissioners, have the same powers and protection extended to them as overseers, s. 2.

It is enacted by 15 & 16 V. c. 81, which amends 13 & 14 V. c. 65, that justices at sessions may appoint committees for preparing a basis or standard for assessing county rates, who may require the overseers of the poor and the other proper persons to make returns of the annual value of the property in the parish liable to be assessed, with the date of the last valuation. The overseers of the poor are to receive any objections that may be made to the proposed basis. Overseers or others refusing to attend, or produce documents, are made liable to forfeit a sum not exceeding twenty pounds, to be recovered before any two justices of the peace. The overseers of parishes situated partly within boroughs and partly without are to collect the county rate, leviable on the part of the parish not comprised within the borough; the act also imposes a penalty, not to exceed five pounds, on any person who shall obstruct overseers and others in the execution of any duty imposed on them by this act.

By 59 G. 3, c. 12, the inhabitants in vestry assembled may elect one or more *assistant overseers*, and justices are required to appoint the assistant overseers so elected. Such paid officers are removable by the poor-law commissioners, and if removed, are not competent to fill any office connected with the relief of the poor, 4 & 5 W. 4, c. 76, s. 48.

Overseers, with the consent of the inhabitants, may hire any house, or contract with any person for the lodging, maintaining, and employing the poor, and take the benefit of their work and service for the use of the poor in general. But poor-law commis-

missioners may make rules as to contracts; and contracts contrary thereto may be disallowed, 4 & 5 W. 4, c. 76, s. 49.

Persons *threatening* to run away and leave their families chargeable, or being able and refusing to work and maintain them, may be committed to the house of correction.

Where a family is left chargeable, the overseers may seize, with the order of the justices, so much of the rents and profits of the father as will maintain them. The husband is liable for all relief given to his wife, or children under the age of sixteen, and such relief may be considered *a loan*, for which the wages of the party may be attached in the hands of his employer, 4 & 5 W. 4, c. 76, ss. 56, 58.

Seamen's wages and pensions may be made available for the maintenance of their families when chargeable, 59 G. 3, c. 15.

Books must be kept open for the inspection of the parishioners, in which shall be registered the names of persons receiving relief, the time when they were first admitted, and the occasion which reduced them to that necessity.

Poor children, whose parents are unable to provide for them, may be bound out apprentice; if male, to the age of twenty-one, if female, to the age of twenty-one, or till married. The inhabitants are not merely at liberty to take, but may be compelled to take, such poor apprentices. Boys may be bound apprentice from the age of ten to twenty-one to the sea service, and from the age of eight to sixteen to chimney-sweeping.

By 55 G. 3, c. 137, notice of all contracts for supplying workhouses must be publicly advertised at least seven days prior to the time appointed for receiving proposals for the same.

By 1 & 2 W. 4, c. 42, churchwardens and overseers may hire and lease any quantity of land within or near the parish, not exceeding *fifty* acres, for the use and employment of the poor. They may also inclose for the use of the parish any part of the waste, not exceeding fifty acres, with consent of the lord of the manor, and major part in value of persons having right of common.

By another act, 1 & 2 W. 4, c. 59, the parish officers, with consent of the Treasury, may inclose fifty acres from any waste or forest lands of the crown, for the use of the parish. But no poor person by renting land so inclosed gains thereby a settlement.

By 4 W. 4, c. 76, ss. 95-97, overseer, assistant overseer, master of workhouse, or other officer, wilfully disobeying the orders of justices and guardians in carrying into effect the rules of the commissioners, to forfeit any sum not exceeding £5. No overseer to be prosecuted for not executing illegal orders of justices or guardians. Overseer or other officer purloining, wasting, or misapplying any moneys or goods to forfeit £20, and treble the value of the property. Owner, ratepayer, or inhabitant, competent witness.

By 7 & 8 V. c. 101, s. 63, if any overseer neglect to make or collect sufficient rates for the relief of the poor, or to pay such

rates to the guardians, by which any relief directed by the guardians to be given to the poor shall be delayed for seven days, such overseer shall, on conviction, forfeit a sum not exceeding £20.

OFFICES AND DOCUMENTS.—By the 24 & 25 V. c. 125, the overseers of any parish the population whereof shall exceed 4,000 according to the census, with the consent of the vestry, called after due notice, and with the consent of the Poor-law (now the Local Government) Board, may hire any room, or purchase or take upon lease or exchange any land or building, or sell land belonging to such parish, and invest the proceeds of such sale in the purchase of other land and building, or erect a suitable building on any land acquired as aforesaid, for the purpose of an office for the transaction of the business of the parish. The Lands Clauses Consolidation Act, 1845, to be incorporated with this act so far as consistent with it, except as to purchases and taking of lands. By s. 2, overseers may, with consent of vestry, provide depositories for parish books and documents, if requisite, and charge the cost on poor rate.

PARLIAMENTARY ELECTIONS.—Agreeably with the 6 V. c. 18, the overseers, having received printed forms on or before the 10th of June from the clerks of the peace, must give notice on or before the 20th, requiring all persons entitled to vote for a *county* member, and who are not already upon the existing register, or who have changed their qualification or place of abode, to send their names in a prescribed form, claiming to be placed on the register, to the overseer, on or before the 20th of July next ensuing.

On the last day of July the overseer must prepare alphabetical list of claimants; writing "objected" against such as are already on the list or he may object to, or "dead" if he has reason to believe the claimant dead. List of voters to be printed on or before August 1, of which list a copy must be kept by the overseer for the inspection of any person without fee, at any time between the hours of ten and four of every day, except Sunday, during the first fourteen days after the day of publication, and to furnish copies at a fixed price. List of claimants must be delivered to the clerk of the peace before the 29th August.

In cities and boroughs overseers receive the printed forms from the town clerks, but must give notice before the 20th June in every year as to payment of rates and taxes, as already noticed under the head of *House of Commons*. (*See* p. 32.)

List of voters must be affixed on the outside of every church or public place of worship, or the town-hall, or other conspicuous place, during the two Sundays after August 1. If notices or lists be removed or damaged they must be restored: but wilfully removing or damaging subjects the offender to a penalty of 40s. or not less than 10s.

Overseer or other person who wilfully contravenes or disobeys any provision of the Reform Act is liable to a penalty of £500, W. 4, c. 45, s. 76.

XII. PARISH CLERKS, SEXTONS, AND OTHER PARISH OFFICERS.

Parish clerks and sextons are persons connected with the church, and have, by the common law, freeholds in their office. They are usually appointed by the incumbent, but by custom may be chosen by the parishioners. A parish clerk may (by 7 & 8 V. c. 59, s. 5) be suspended or removed by the archdeacon or other ordinary for misconduct or negligence. He is sometimes, but rarely, in holy orders; he is to be appointed annually by the minister in churches built under the Church Building Acts; he must be at least twenty years of age; be able to read and write, of honest conversation, and have a competent knowledge of psalmody, in order that he may lead the parishioners in this part of their devotion. Parish clerks in holy orders may be licensed as assistant curates. [*See* as to parish clerks in orders 7 & 8 V. c. 59, ss. 2, 3, 4.]

In any parish, the population of which exceeds 2,000 persons, and which is brought under the provisions of 13 & 14 V. c. 57, a vestry clerk may be appointed, whose business is to assist and advise the churchwardens and overseers in the duties of their office, and to attend parish meetings; to draw up and copy all orders and other acts of the vestry, and to give copies thereof to the parishioners when required.

The business of sextons is to keep the church and pews cleanly swept and sufficiently aired; to make graves and open vaults for the burial of the dead; to provide (under the churchwarden's direction) candles for lighting the church, bread and wine, and other necessaries for the communion, and also water for baptism; to attend the church during divine service, in order to open the pew doors for the parishioners, keep out dogs, and prevent disturbance. Their salaries are either according to the custom of parishes, or are settled by the vestry.

Besides the parish clerk and sexton there is often attached to the church a beadle. This officer is also appointed by the vestry. His business is to give notice when a vestry is appointed; to attend upon it when met, and execute its orders. He is also to assist the churchwardens, overseers, and constables in their respective duties, and make himself generally useful in vestry and parish business.

XIII. SUPERANNUATION ALLOWANCES TO PARISH OFFICERS.

By 27 & 28 V. c. 42, the guardians of any union or parish, and the trustees or overseers of any parish incorporated, may, with consent of Poor-law (now Local Government) Board, grant to any officer whose whole time has been devoted to the service of the union or parish, and who has become incapable of discharging the duties of his office with efficiency, by reason of permanent infirmity

of mind or body, or of old age, upon his resigning or ceasing to hold his office, an annual allowance not exceeding two-thirds of his salary at the time, and may charge it to the same fund as that to which his salary has been charged. This allowance to be payable to or in trust for such officer only, and shall not be assignable nor chargeable with his debts or other liabilities. No one to be entitled on the ground of age who has not completed the full age of sixty years, and served as an officer for twenty years at the least. No grant to be made without one month's previous notice, given in writing to every guardian or to every member of the board of trustees or overseers, of the proposal to make such grant, and the time when it shall be brought forward.

By a subsequent act, the 29 & 30 V. c. 113, the superintendent registrar and the registrar of births and deaths in any union or parish are deemed officers under the 27 & 28 V. c. 42, and may be superannuated; and, in computing the salary of an officer, the amount of the emoluments of his office on the average of the three years concluded at the last preceding quarter may be taken into calculation by the guardians, managers, or overseers. Relieving officers, who have also been registrars, are eligible to a superannuation allowance, and also the officers of a district school, by the order of its managers. Any surplus money raised or borrowed for emigration may be applied in aid of the current rate. By s. 10, the same person not to be overseer and assistant-overseer. One overseer only to be appointed in small parishes, and if no resident householder is fit, the inhabitant householders of an adjoining parish may be appointed, if willing to serve. In any parish the same person may hold jointly the office of churchwarden and overseer. Provision made by s. 14 for the education of children in the religion of parents or next of kin. Persons relieved out of the workhouse refusing to perform taskwork made liable to be punished as idle and disorderly persons under 5 G. 4, c. 83.

XIV. SURVEYORS OF HIGHWAYS AND LAWS RELATING TO ROADS.

Every parish is bound to keep the highways passing through it in repair, unless, by reason of the tenure of land or otherwise, this office is consigned to private persons. For this purpose, surveyors of the highways are appointed; and the 5 & 6 W. 4, c. 50, directs that they be annually elected by the parishioners, at their first vestry meeting for the nomination of overseers of the poor. Qualification of a surveyor to be property of the annual value of £10, or a personal estate of the value of £100, or tenancy of the yearly value of £20. Penalty on surveyor refusing to serve, £20. A salaried surveyor may be appointed. Parishes may be formed into districts, and a district surveyor chosen. Surveyors of all parishes (except within three miles of the General Post-office, London) to

erect direction posts or stones at all cross roads, with distinct inscriptions for the use of travellers.

A highway is a common way, leading from one town to another, and over which every person has an equal right of thoroughfare, and this whether it be only a foot-way, a horse and foot-way, or a cart-way. A way to a parish, which is only for the particular inhabitants of such parish is a *private* way only, and not a highway, because it does not belong to the public, but to some particular persons, each of whom may have an action for a nuisance thereon.

The general and amending act of *highways* is the 25 & 26 V. c. 61. By s. 5, notice having been given by the clerk of the peace, at the instance of five or more justices, to churchwardens or overseers of parishes, justices in general or quarter session may issue a provisional order dividing their county, or some part thereof, into *highway districts*, or constituting the whole county, or some part of it, a highway district for the more convenient management of highways. But such order not to be valid unless confirmed by final order of justices of a subsequent session. At a subsequent court held within six months the confirmation of the provisional order to be considered. Provisional order to state the parishes to be united in such district, the name by which the district is to be known, and the number of waywardens, one at least, which each parish is to elect. Final order to be advertised in *London Gazette* and one or more local newspapers. Parishes within metropolitan limits not included. By s. 9, the highway board is to consist of the waywardens elected and of the justices acting for the county, and residing within the district. Waywardens are re-eligible. Two offices not to be held by the same person. Duties of each prescribed, ss. 13-16.

As respects works and duties of the board, s. 17 provides that it shall maintain in good repair the highways within its district. On complaint to a justice that any highway of the district is out of repair, two summonses may issue, one directed to the board, and the other to the waywardens of the parish liable to repair such highway. Question of liability to be decided at petty sessions, at which the board may appear by a member or its surveyor or clerk. Appeal to next assizes if liability is disputed, s. 19.

By s. 20, parishes are to contribute towards the official expenses of the board in proportion to their average expenditure in highway repairs in three preceding years; but the expense of keeping in repair the highways of each parish within the district is to be a separate charge on each parish. No contribution at once towards the expenses of the board to exceed 10*d.* in the pound, nor the aggregate contribution of one year to exceed 2*s.* 6*d.* in the pound, except with the consent of four-fifths of the ratepayers of the parish. Power given to overseers to levy rates for making payments to the board. Accounts to be made up to March 25 of each

year. Clerk of board to transmit statement within thirty days after audit to secretary of state, under a penalty for neglect.

An act of 1864, the 27 & 28 V. c. 101, amends former acts as to the appointment of waywardens, the defraying of the expenses of the highway board, the cost of parishes applying to be removed from one district to another, and in respect of cattle found straying. By ss. 14 & 39 of the act of 1862, the powers of justices are extended to the separation of any townships, hamlets, or places separately maintaining their own highways, and which may have been previously consolidated by an order of justices. (*See* also 28 & 29 V. c. 107.)

The turnpike roads are placed under the management and direction of certain bodies of trustees, who are usually named and appointed by the respective acts of parliament, which are occasionally passed for the purpose of making, repairing, and sustaining the particular roads therein specified; but the power of these statutes being confined to separate and distinct objects, it has been thought expedient to pass some general laws which should apply in common to all trustees and turnpike roads throughout the kingdom. These general provisions are chiefly comprised in the 3 G. 4, c. 126; amended by 4 G. 4, c. 95; 7 & 8 G. 4, c. 24; 9 G. 4, c. 77; 1 & 2 W. 4, c. 25; 4 W. 4, c. 80; 5 W. 4, c. 81; 2 & 3 V. c. 46; 4 & 5 V. c. 33; 12 & 13 V. c. 87; 13 & 14 V. c. 79; 32 & 33 V. c. 90; 33 & 34 V. c. 73; 34 & 35 V. c. 115; 35 & 36 V. c. 85, and several other statutes, which acts determine what are nuisances on the highways, exemption from toll, the repair of roads, and other matters incidental to the preservation and management of turnpikes. Trustees or commissioners may alter the direction of any road over waste or common land without making any satisfaction, and also through any private lands, by tendering a satisfaction to the owner. But they are not allowed to deviate more than 100 yards from the present line of road, over any private grounds without the consent of the owner in writing, nor make a road more than 60 feet in width.

Exemption from Toll.—Horses or carriages attending or going to attend the queen, or any of the royal family, or returning from such attendance. Horses and carriages conveying materials for roads and bridges, or manure (except lime, or except in cases where tolls have been imposed by local acts), or agricultural produce not sold, or for sale; and also horses employed in husbandry. Persons going or returning from church or other places of religious worship, tolerated by law, on Sunday. But this exemption does not extend to any toll at any gate within five miles of the Royal Exchange in London, or within five miles of Westminster Hall in the city of Westminster. Persons going or returning from the funeral of any person who shall die and be buried within the parish. Ministers attending their religious duty, or going or returning from visiting any sick parishioner, or other parochial duty; officers conveying vagrants

or prisoners; officers of the army, or soldiers or volunteers on duty; horses and carriages used by the corps of yeomanry; horses or police-vans in the service of the metropolitan police; persons going or returning from the election of any knight of the shire. No toll can be taken for any horse, ass, sheep, swine, or other beast or cattle of any kind whatsoever, or of any waggon, cart, vehicle, or other carriage whatsoever, or carriage which shall only cross any turnpike road, or shall not pass above 100 yards thereon, 4 & 5 V. c. 33; nor for any horse, ass, sheep, swine, or other beast or cattle, going or returning from water or pasture, or from being shod or farried, provided they do not pass on the road more than two miles, going or returning. Persons claiming an exemption from toll, who are not entitled thereto, are liable to a penalty not exceeding £5.

Penalties on Toll-collectors.—Toll-collectors are required to inscribe their names in conspicuous characters on the front of their houses, and if taking more or less than the toll, or refusing to give their names to persons demanding the same, after paying the toll, or obstructing or injuring any passenger in passing through any toll-gate, or using any scurrilous or abusive language to any traveller or passenger; in every such case the toll-collector is liable to a penalty not exceeding £5. *A table of tolls*, in large and conspicuous characters, is to be put up by the trustees. By 7 & 8 G. 4, c. 24, s. 6, trustees of roads may direct lamps to be lighted up at toll-houses, and collectors or lessees of roads neglecting so to do, are subject to a penalty of 20*s*. Persons damaging such lamps, or extinguishing the light, are subject to the penalty of 40*s*.

Mile-stones and direction posts are to be erected; also, the names of towns and villages at the entrance thereto, and stones marking the boundaries of parishes. Penalty for injuring or defacing the same not exceeding £10.

Union of Turnpike Trusts.—For the better and more economical management of turnpike trusts, it is provided by an act of 1849, the 12 and 13 V. c. 46, amended by 13 & 14 V. c. 79, that where the general annual meetings of the trustees of two or more turnpike roads have been held at the same place, or at places distant not more than ten miles from each other, two or more of the trustees of each of such roads may call a joint meeting of the trustees of such several roads, of which meeting twenty-one days' previous notice must be given; and if at such joint meeting it be deemed expedient by a majority, being not less than two-thirds of the trustees of each of the trusts so proposed to be united, the trusts may be united, on assent being obtained from creditors. The united trust to be subject to liabilities and entitled to tolls of each trust so united. But special provisions of the General Turnpike Acts, as to amount of tolls, exemptions, and the like, not to apply

to the united trusts, only to the particular roads to which they are applicable. Nor does anything in the act affect the rights or interests of any person in office under the trust. (*See also* 31 & 32 V. c. 99.)

The 35 & 36 V. c. 85, enables the highway board voluntarily to repair a turnpike road at the cost of the district fund, and also gives the highway boards power to pay off debts on turnpikes.

Nuisances.—Persons riding on the footpaths; killing, dressing, or scalding any cattle or swine on or near the sides of the road; gipsies erecting their tents or booths on or near the side of the road; blacksmiths suffering the lights of their shops to shine on the road after twilight; persons making bonfires, or letting off fireworks, or baiting bulls, or playing at football, cricket, or other game, on the road, or sides thereof; persons leaving waggons, &c., without any person in the care of them for longer time than necessary; lastly, persons destroying or damaging any lamp or lamp-post, are all nuisances, and persons committing them are liable for every offence to forfeit not exceeding 40*s.* over and above the damage occasioned thereby. Owners of lands adjoining turnpike roads are to cut and trim their hedges to the height of six feet, and to lop the branches of trees, shrubs or bushes adjacent. Penalty, after due complaint and notice, for every twenty-four feet of hedge, 2*s.*, and for every tree, bush, or shrub, 2*d.* But no person can be compelled to cut or prune any hedge except between the last day of September and the last day of March. By 2 & 3 V. c. 45, to prevent accidents, the proprietors of any *railway* are required to maintain gates, and proper persons to open and shut the same, where any railway crosses any turnpike road, highway, or statute labour road.

Watering the Roads.—On particular roads the trustees are empowered to direct them to be watered, and to impose an additional toll to defray the expenses thereof; at any general meeting for the purpose the trustees may order such roads to be watered, and additional toll paid, from any time from March 1 to November 1, following; and such additional toll may be collected, under the same penalties as any other toll payable on such roads, 3 G. 4, c. 126, s. 120.

Gates and *doors* must open *inwards*, so as not to project over road or footpath; such as are contrary to the act, not being removed fourteen days after notice, may be removed by the surveyor, the expense to be defrayed by the owner, and a fine not exceeding 40*s.* inflicted.

Names of Owners.—The owner of every waggon, wain, cart, or such-like carriage, is required to paint on the right, or off side, his Christian, surname, and abode, at full length, in large legible characters of not less than one inch in height. Penalty not exceeding £5.

Penalties on Drivers.—One driver may take charge of two

carts, if drawn by only *one* horse each. But this does not extend to carts within ten miles of London or Westminster. No child *under* the age of thirteen to drive any cart. Penalty on the owner not exceeding 10s. Driver of waggons, carts, &c., riding thereon (except in cases of such light carts as are usually driven with reins), or wilfully being at such distance from the same that he cannot have any government of his horses; or driving any vehicle without the *owner's name;* or not keeping the *left* or near side of the road, shall, for every offence, forfeit not exceeding 40s., or, if the owner, £5; and in default of payment be committed to the house of correction for a term not exceeding one month. Drivers refusing to discover their names in any of these cases are liable to be imprisoned three months.

CHAPTER VI.

Corporations.

A CORPORATION consists of one or more individuals, created by royal charter, act of parliament, or prescription, and inheriting, in its corporate capacity, certain properties, rights and immunities, which it may transmit in perpetuity to its successor; the main object of such institution being security of possession and uninterrupted succession, a kind of artificial person is created, not liable to the ordinary casualties which affect the transmission of private rights, but capable by its constitution of indefinitely continuing its own existence.

A corporation or body corporate may be either *lay* or *ecclesiastical*. *Ecclesiastical* corporations are where the members that compose them are spiritual persons; such as bishops, certain deans, and prebendaries; all archdeacons, parsons, and vicars. *Lay* corporations are either civil or eleemosynary; the former are chiefly established for the government of towns, public improvements, or the advancement of commerce and learning; the latter for the perpetual distribution of the free alms or bounty of the founder; and of which kind are all hospitals for the poor, and all colleges, both in the national universities, and at Manchester, Eton, and Winchester.

Corporations are either *sole* or *aggregate*, that is, consisting of one or many; the queen, a bishop, some deans, parson, or vicar, is a corporation sole, being perpetual in their successor. Corporations aggregate are commonly the mayor and burgesses of a town; the head and fellows of a college; the dean and chapter of a cathedral church.

A *name* is essential to every corporation, by which it may be known, and do all legal acts.

The powers usually annexed to corporate bodies are, 1. To have, by descent, election, or otherwise, perpetual succession. 2. To sue and be sued, and do all other acts which individuals may do, in their corporate capacity. 3. To purchase lands, and have a common seal. 4. To make by-laws for the better government of the corporation. But no trading company is allowed to make by-laws which may affect the queen's prerogative or the interests of individuals, unless approved by the chancellor, treasurer, and chief justices, or the judges of assize; and even though so approved, if contrary to law, they are void.

Corporations cannot commit felony or treason; they cannot appear in legal proceedings, except by their attorney or officer acting for them. They are not generally bound by their common seal; nor by bill or note, except in the case of trading companies. Those having municipal jurisdiction, as town corporations, may frame laws binding on strangers; but companies or guilds, such as the civic companies of London, have no local power, and can only bind the members of their own fraternities.

The constitution of a corporation, as settled by act of parliament, cannot be varied by the acceptance of a charter inconsistent with it, 6 *T. R.* 268.

The queen cannot by her prerogative dissolve a corporation.

No member can vote in the general courts, unless he have been six months in possession of the stock necessary to qualify him, except it comes to him by bequest, marriage, succession, or settlement.

The election of officers of corporations and other public companies which falls on a Sunday, must be held on the Saturday next preceding, or the Monday next ensuing, 3 W. 4, c. 31.

A corporation may be dissolved—1. By act of parliament. 2. By the natural death of all its members. 3. By surrender of its franchises into the hands of the queen. 4. By forfeiture of its charter through negligence or abuse of its privileges; in which case the law concludes the conditions upon which it was incorporated are broken, and the grant of incorporation forfeited.

II. MUNICIPAL OR TOWN CORPORATIONS.

These, with the exception of London, are regulated by 5 & 6 W. 4, c. 76, by which all existing laws, usages, grants, and charters are abolished, but reserves to inhabitants, freemen, burgesses, and apprentices, and to the sons, sons-in-law, daughters, wives, and widows of freemen and burgesses, certain interests in charitable funds, and to the latter the right of voting in parliamentary elections, prohibiting, however, future admissions by gift or purchase. Under this statute the government of a borough is vested in the freemen or burgesses existing at the passing of the act, Sep. 9, 1835, whose rights are reserved, and the burgesses subsequently

enrolled. From the burgesses the mayor, aldermen, and councillors are elected.

To be *burgess* qualified to vote at municipal elections, 1. He must be of full age. 2. On the last day in August in any year he must have occupied a house, warehouse, counting-house or shop in the borough during that year and the whole of each of the *two preceding years* (now for one year only, see infra). 3. During the time of occupation he must have been an inhabitant householder in the borough or within seven miles thereof. 4. He must have been duly enrolled, and to be enrolled must have been rated during his time of occupation in respect of the premises occupied to all rates made for the relief of the poor of the parish in which the premises are situated. 5. He must have paid, before the last day of August, all taxes and rates payable for his premises except such as became payable six calendar months before the last day of August. The premises occupied need not be the same premises, nor in the same parish. Aliens and persons who have received parochial relief within the twelve months preceding the last day of August, or any charitable allowance from any fund entrusted to the charitable trustees of the borough, not eligible to be enrolled.

The 32 & 33 V. c. 55, shortens to one year the term of residence and occupation required as a qualification for the exercise of the municipal franchise, with amendments for other purposes. By s. 3, a councillor or alderman may reside within fifteen miles of the borough. *Members of the Town Council*, namely, the mayor, aldermen, and councillors, must, in addition to fulfilling the conditions imposed on burgesses, have the following qualifications:—In boroughs divided into four or more wards they must be possessed of real or personal estate to the amount of £1,000, or be rated to the relief of the poor upon the annual value of at least £30; and in boroughs divided into less than four wards, or not divided into wards, be possessed of real or personal estate to the amount of £500, or be rated to the relief of the poor upon the annual value of not less than £15. A burgess is disqualified to be a member of the council if in holy orders, or the regular minister of a dissenting congregation; if holding any office or place of profit, other than that of mayor, in the disposal of the council; or if directly or indirectly by himself or partner having any share or interest in any contract or employment with, by, or on behalf of the council. But 15 V. c. 5, explains that persons who have a share or interest in any newspaper in which advertisements appear relating to the borough, council, commissioners and trustees, are not to be deemed contractors by reason of such advertisements. And by 33 & 34 V. c. 55, a proprietor of shares in companies not to be deemed a contractor, or be disqualified from election to municipal offices by reason of such holding.

Overseers are to make out a list of burgesses by September 5th (September 1st by 20 & 21 V. c. 50), which is to be open to in-

spection without fee until the 15th; town clerk to exhibit burgess list on the outer door of the town hall or some conspicuous place on every day during the week next preceding the 15th of September; burgesses omitted must give notice on or before the 15th of September. List of claimants and persons objected to, to be published during the eight days preceding October 1st. Mayor and assessors to hold an open court for the revision of the burgess list between the 1st and 15th days of October. Copies of the burgess roll to be printed for sale. Councillors to be chosen November 1st, and one-third part of the council to go out of office annually. Auditors and assessors are to be chosen by the burgesses March 1st from among the persons qualified to be councillors. Council to elect the mayor and aldermen November 9th from among the councillors. Mayor refusing to serve to forfeit not exceeding £100; aldermen, councillor, auditor, or assessor, £50. Acting as councillor without a due qualification incurs a penalty of £50.

On the petition of the inhabitant householders of any towns not corporate, the queen is empowered to extend the provisions of this important statute by the grant of charters of incorporation. Manchester, Birmingham, and Bolton have availed themselves of this clause, and obtained charters; adding three to the 178 boroughs to which the act originally extended.

Borough constables elected under the act are disqualified from voting in the election of persons to municipal offices, or for members of parliament, by 19 & 20 V. c. 69, s. 9. Penalty £10, or for attempting to influence an elector.

By 5 & 6 V. c. 104, no member of council can vote or take part in the discussion of any matter before the council in which he or his partner has any particular interest; but not disqualified by having an interest in lease of lands.

The 6 & 7 V. c. 89, enacts that no election of mayor, alderman, or councillor can be called in question for defect of title, unless by *quo warranto* within twelve months from the election.

The 12 & 13 V. c. 82, relieves municipal boroughs, in specified cases, from contributions to certain descriptions of county expenditure.

The 14 & 15 V. c. 39, provides that burgesses and freemen whose franchises were reserved under the Reform Act, shall not be affected by the change in rating small tenements under 13 & 14 V. c. 99.

The acts applying to corporations, specified in the schedule of 5 & 6 W. 4, c. 76, are extended by 16 & 17 V. c. 79, to corporations erected subsequent to the passing of that act. By s. 5, boroughs appointing inspectors of weights and measures are not to be liable to contribute to the county rate in respect of weights and measures. By s. 6, town councillors are no longer exempted or disqualified from serving on the grand jury or the quarter sessions for the borough, so far as respects boroughs not containing 12,000 in-

ccording to the last census. The mayor of every city, town corporate, may appoint for deputy an alderman r to act for him during illness or absence, s. 7.

; 21 V. c. 50, the trustees for paving, lighting, &c., 5 & 6 W. 4, c. 76, in any borough named in the f that act, or to which a charter of incorporation has granted, may, at a meeting called for the purpose, powers, property, and liabilities to the body corporate oughs. Act not to extend to Cambridge without con- chancellor, masters, and scholars of the university. nsfer is to be made in any borough without a resolution ough council, s. 3. By s. 5, all duties imposed on ties and boroughs by 3 G. 4, c. 46, to be performed by he peace. In boroughs consisting of more than one ase the burgess roll for any parish be not made out for revious burgess roll to continue in force for such year.

relating to *elections and divisions of boroughs into* amended in 1852 by 22 V. c. 35. By s. 1, on peti- Majesty by two-thirds in number of the council of any ; may be divided into wards, or the number and boun- oroughs already so divided may be altered. Notice of be given in the *Gazette*. Barristers to be appointed of assize, to set out boundaries, and to be remunerated of five guineas per day above travelling expenses, t of the borough fund, s. 1. S. 8 provides for the ouncillors, if the number nominated equals, exceeds, an, the number required to be elected.

V. c. 60, provides for the better prevention of corrupt municipal elections, and establishes a tribunal for the validity of such elections. Such tribunal is to consist ter or barristers not exceeding five in number, and of an fifteen years' standing, and not being members of to be appointed for that purpose by the judges for the on the rota, for the trial of election petitions.

c. 16, the Treasury, in approving *mortgages by muni- rations*, may require money borrowed to be repaid within ime by instalments, or by a sinking fund, or by both. ay, when it authorizes the sale of land, direct the in- f proceeds. Misappropriation of moneys contrary to ons of 20 & 21 V. c. 54, a misdemeanour. By s. 7, cities or boroughs may acquire lands with consent of ry. Answers of Treasury to applications of corpora- published on the outer door of the town-hall, or in icuous place within the borough.

25 V. c. 55, the mayor is to have *precedence* over all ing in and for the borough, and to take the chair at f justices; but not to have precedence over justices ty, unless acting in the business of the borough, nor

over any stipendiary magistrate administering justice. Mayors of Oxford and Cambridge not to precede the vice-chancellors of the universities, s. 2. Justices of a borough deemed to be resident if occupiers of any *house, shop, or warehouse* within the same, s. 3. Boroughs having a separate commission of the peace to be deemed towns corporate for the purpose of licensing inns, ale-houses, and victualling-houses. S. 5 prohibits the justices of boroughs from appointing as their clerk any alderman or councillor, or the clerk of the peace of the borough, or of any county. Provisions of 22 & 23 V. c. 56, as to appointment of inspectors of weights and measures, extended to all boroughs having a separate commission of the peace, s. 6.

III.—CORPORATION OF LONDON AND GOVERNMENT OF THE METROPOLIS.

The city of London is under the jurisdiction of its municipal corporation. By the 11 G. 1, c. 18, the right of election of aldermen and common councilmen for the several wards is declared to pertain to freemen of the city, being householders, paying scot and bearing lot in their respective wards; the houses occupied being of the real value of £10 a year at the least, and the householder the sole occupier, and having been in possession of such house in the ward where the election is made for twelve calendar months next before the election. By a local act of 1849, the 12 & 13 V. c. 94, s. 2, to *amend* the 11 G. 1, it is enacted that at any election for alderman, common-councilman, or ward officer, "every freeman of the city (not subject to legal incapacity) who shall occupy, within the city or liberties, either solely or jointly with any other person, any *house, warehouse, counting-house, office, chamber*, or *shop*, and shall, in the case of a *sole* occupation, be rated in his own name to an amount not less than £10, or, in case of a *joint* occupation, be rated in the joint names of the occupiers to an amount not less than £10 for each occupier, to the police or other rate, and who shall be registered in the register of voters for the city, in use for the election of members of parliament, and then in force in respect of such premises, shall be entitled to vote in any election for alderman, common-councilman, or ward officer." Aldermen and common-councilmen, on November 1st in every year, to make out an alphabetical list of all freemen occupiers entitled to vote under the act; the list to be signed by the alderman of the ward; the ward clerk to keep a true copy of the list, open to perusal by any person, without payment of fee, at reasonable hours, from the 1st to the 15th of November, and at all times to deliver a copy of the list to any person requiring it, on payment of a reasonable price. By s. 5, every freeman occupier, qualified as above to vote at an election, is qualified to be elected a common-councilman of the ward in which his premises are situated. A

declaration to be made by the voters in lieu of an oath, and, if false, punishable as perjury. Any alderman or common-councilman becoming bankrupt or insolvent, or making any composition with his creditors, or absenting himself from his duty above six calendar months consecutively, unless prevented by illness or other reasonable cause, or convicted of fraud or any crime, shall cease to hold the office of alderman or common-councilman: persons compounding with creditors, and afterwards paying debts in full, qualified to be re-elected.

The LIVERYMEN OF LONDON are so called because they formerly wore liveries or badges peculiar to each company. They are a numerous and respectable body of the city, chosen from among the freemen of the different guilds, or incorporated trades. They are compelled to hold the office without some reasonable excuse to the contrary; and on refusal to serve may be fined, and action of debt brought for the recovery of the penalty; but they cannot be imprisoned, 1 *Mod. Rep.* 10. By 11 G. 1, c. 18, liverymen who have been twelve months on the livery are entitled to vote for members of parliament, and, by charter, for the election of the lord mayor, chamberlain, sheriffs, &c.

The 26 & 27 V. c. 206, is for better regulating the *traffic, and preventing obstructions* in the city and liberties. By s. 3, the court of lord mayor and aldermen may make regulations for the routes and stands to be used by omnibuses and stage-carriages, licensed for the conveyance of passengers by separate fares, and preventing unreasonable obstructions. It may regulate the height and width of the loading of carts, waggons, and other vehicles for the conveyance of goods, and using the streets between nine in the morning and six in the evening; the breadth within the outside of the wheels; but no vehicle in use at the passing of the act, July 23, 1863, to be required to be altered. The court may fix the hours during which vehicles wholly or partially laden with timber, scaffolding, masts, spars, and other articles consisting of wood, metal, or other material, exceeding twenty-five feet in length, or eight feet six inches in breadth, shall be allowed to pass, or be prohibited. Regulations may be made for distinguishing cabs and hackney carriages, when empty, or plying for hire; and determining the period when coals may be delivered through openings in the streets and lanes. Regulations for shoeblacks, appointing their stands and numbers. Such regulations within the acts may be enforced by penalties not above 40*s.* or imprisonment. Regulations not to be enforced till one month after confirmation by a secretary of state. By-laws to be published one month previous in the *London Gazette*, and such by-laws to be printed and sold at a penny. An act of 1870, the 33 & 34 V. c. 60, relieves the brokers of the city from the supervision of the court of mayor and aldermen.

The metropolis includes the cities of London and Westminster,

and the borough of Southwark, environed by numerous large suburban parishes, within the distance of six miles from the central point of St. Paul's Cathedral, and together, for the purposes of police and registration, forming one vast aggregation of localities, connected by continuous lines of houses. The metropolitan police district extends to any place within the limits of the Central Criminal Court, that is, ten miles from St. Paul's, or fifteen miles from Charing Cross. In the session of 1855, an elaborate statute was framed by Sir Benjamin Hall for improving the management of the metropolis, and which made important changes in its local administration. The act is the 18 & 19 V. c. 120, and is comprehensive but definite in its purposes. It does not interfere with the police of the capital, nor supply any deficiencies in the municipal government of its inhabitants; but supersedes by new creations previously existing commissions and parochial boards in respect of sewerage, drainage, paving, cleansing, and lighting. In place of these authorities, and for the purpose of improved local management, vestries are to be elected by the *rated householders*, consisting of not less than 18 or above 120 qualified members. In addition, a Metropolitan Board of Works and district boards of works are to be instituted; the members of the former to be elected by the vestries of the large parishes, and by the district boards formed by the union, and chosen by the vestries of the smaller parishes. The basis of the act is the representative principle, in primarily vesting local affairs in vestries elected by the rated inhabitant householders. The city of London is not included in its operations, further than by returning three members to the Metropolitan Board of Works, which has entire control of the various sewers of the capital and its environs. By 19 & 20 V. c. 112, the powers of the board are declared to extend to authorize applications to parliament for providing parks, pleasure-grounds, or places of recreation, the expenses to be defrayed as other expenses. A district board or vestry is empowered to take land by agreement or gift, to be maintained as an open place or pleasure-ground.

Purification of the Thames: With a view to the health of the metropolis, in 1858, by 21 & 22 V. c. 104, the powers of the board are extended for the speedy and complete purification of the Thames and the main drainage of the metropolis. For these purposes they may adopt such plans as seem to them proper for preventing the sewage of the capital from passing into the river within the metropolis. They may construct any work through, along, over, or under the bed and shores of the Thames, making compensation as provided by 18 and 19 V. to persons having any wharf, jetty, or any other property damaged by such work. They may also take land, and construct works for deodorizing sewage, either within or beyond the limits of the metropolis. The board during forty years may raise a rate of 3*d*. in the pound, to be called "the metropolis

main-drainage rate," on the annual value of property in the metropolis, according to the estimate on which the county rate is assessed. By 25 & 26 V. c. 93, power is given to the board to make and maintain an embankment and viaduct on the left or north side of the foreshore of the river Thames, with all necessary wharfs, basins, landing-places, stairs, and approaches, such embankment to commence at the Middlesex end of Westminster Bridge, and terminate near the east boundary of the Inner Temple; and the viaduct to commence at the east boundary of the Inner Temple, and terminate near the west side of the north end of Blackfriars Bridge. By another act, the 26 & 27 V. c. 75, the board is authorised to make an embankment on the south side of the Thames, in the parish of Lambeth, commencing near Gun Alley, and ending at Westminster Bridge. To meet the cost of these metropolitan improvements the coal duties of 18*d.* per ton, and the wine duties of 5*s.* a tun, are continued to 1882. Of the coal duty, 4*d.* to be applied to the raising of Holborn Valley, and improvements adjacent to Skinner Street. In 1864 former act repealed pertaining to *street music;* and the 27 & 28 V. c. 55, provides that any householder personally, or by his servant, or by any police constable, may require street musicians or singers to depart from the neighbourhood of the house on account of the illness or interruption of the ordinary occupations or pursuits of any inmate, or for other reasonable or sufficient cause. Penalty for disobedience not above 40*s.*, or three days' imprisonment. The 28 & 29 V. c. 90, provides for the establishment of a fire brigade in the metropolis.

Traffic, Streets, and Poor: The 30 & 31 V. c. 134, is for regulating the traffic in the metropolis, and making provisions for the greater security of persons passing through the streets. The metropolis is defined to mean the city of London and all parishes and places within the jurisdiction of the Metropolitan Board of Works. After January 1, 1868, no person, between the hours of ten in the morning and seven in the evening, to remove, in certain streets named by the commissioners of police, any ashes, dust, or refuse from any house in any street. No goods or other articles allowed to rest or cause obstruction in any footway or other part of a street for a longer time than absolutely necessary for the loading or unloading of such goods. Penalty not exceeding 40*s.* Cattle not to be driven through the streets between ten in the morning and seven in the evening, except with the permission of a commissioner of police. Metropolitan carriages not to be stopped for the purpose of setting down or taking up passengers except as near as possible to the left or near side of the roadway. See also 31 & 32 V. c. 5. Another important act of metropolitan interest is the 30 V. c. 6, for the establishment in the metropolis of *asylums* for the sick, insane, and other classes of the poor, and dispensaries; and for the distribution over the metropolis of por-

tions of the charge for poor relief. Districts may be formed by order of the Poor Law Board for the support and management of asylums for the reception of sick, insane, or infirm, or other classes of poor chargeable in the metropolis. A body of managers, by s. 8, to be constituted for the management of one or more asylums of a district. Managers to be partly elected by guardians of unions or parishes, and partly nominated by the Poor Law Board, s. 11. S. 14 imposes a penalty on managers being concerned in contracts for the use of workhouses, or for the support of the poor. Admission into asylums to be regulated by orders of Poor Law Board. For outdoor relief the guardians may be directed to build dispensaries by the Poor Law Board, or to fit up part of the workhouse for the purpose, s. 37. The residue of the act is important in reference to district and separate schools, the purchase of lands, and the establishment of a common poor fund for the metropolis.

By the Metropolis Water Act, 1852, the 15 & 16 V. c. 84, it is made unlawful, after August 31, 1855, to supply the metropolis with water for domestic use (except the Chelsea Water Works, to August 31, 1856) from any part of the river Thames below Teddington Lock, or from any part of the tributary streams of the Thames below the highest point where the tide flows in such tributary streams. From August 31, 1855, every reservoir, within a distance in a straight line from St Paul's of not more than five miles, in which water for the supply of the domestic use of the metropolis is stored by any company, shall be roofed in or otherwise covered over; provided that this provision shall not extend to any reservoir the water from which is subjected by the company to efficient filtration after it is discharged from such reservoir, and before it is passed into the mains of the company for distribution, or to any reservoir the whole of the water from which is distributed through distinct mains for other than domestic purposes, nor to any reservoir whatever the water stored in which shall be used exclusively for other than domestic purposes. From December 31, 1855, no water to be brought within the metropolis for the purpose of domestic use otherwise than through pipes or through covered aqueducts, unless the same shall be afterwards filtered before distribution.

If complaint be made in writing by not less than twenty inhabitant householders to the Board of Trade as to the quantity and quality of the water supplied by any company, the Board may appoint a competent person to inquire respecting the same, and report thereon, who is to give notice to the company, and have power to inspect their works, the penalty for obstructing him being £10. If the complaint be well founded, the Board to give notice to the company, who are then required to remove the grounds of complaint within a reasonable time. All steam-engines used by any company are to consume their own smoke. Neither the Kent

Waterworks Company nor the Hampstead Waterworks Company is required to give such supply at any height exceeding 180 feet above Trinity high-water mark; nor the East London Waterworks Company to give such supply at any height exceeding 40 feet above the level of the pavement, nearest the point at which such supply shall be required. By s. 16, the penalty for not complying with these provisions is £200 and £100 for every month during which they are neglected. Every company is to keep a map of their underground works, which is to be open to inspection, and also to furnish particulars of any district main from which the person applying may be furnished. The ambit or circuit of the act extends to Fulham West, Poplar and Woolwich East, Wandsworth and Putney South, and to such parts of Chelsea as lie north of Kensington.

The Metropolis Water Act, 1871 (34 & 35 V. c. 113), makes further provision for supplying London with water. The companies are to provide a constant supply, and are liable to be applied to do so by the metropolitan authority with respect to any district not properly supplied, but the companies cannot be compelled to supply any district constantly with water if more than one-fifth of the premises in such district are not provided with the prescribed fittings. In any district in which any default in respect of the prescribed fittings can be found, the metropolitan authority may, by notice in writing, require the owner or occupier to remedy the default, and in case the owner or occupier neglect to do so the metropolitan authority can do it, and recover the cost from the owner, or from the occupier to the extent of the rent due by him, in a court of summary jurisdiction. The rest of the act deals with various rules and regulations relating to the water companies, and also with prescribed fittings, the quality of the water, and penalties to be recovered in certain cases.

CHAPTER VII.

Joint-Stock Companies.

An association of a number of individuals for the purpose of profit, and possessing a common capital, was, in the eye of the common law, merely a large partnership, which could not, by the union of such individuals, be turned into a single body or person distinct from the members composing it. Such single body could only be formed by a charter from the crown or by a special act of parliament, and was styled a corporation. Many evils arose from this, as when numerous associations of such a nature were formed, it became impossible to deal with them, because of the number of individuals composing them.

It was also impossible for a company to sue one of its members, or to maintain a suit against third parties, and each member might be sued for all the debts of the association; and again the property of no individual member of a corporation could be made liable for the debts of the corporation, as in the eye of the law a corporation is a distinct person.

Various remedies for these evils were attempted from time to time by provision in charter from the crown, by an act, 4 & 5 W. 4, c. 94, which enabled the crown to grant by letters patent certain privileges to a company without incorporating it, and by provisions in acts of parliament. The act 4 & 5 W. 4, c. 94, was repealed by 1 V. c. 73, by which the queen is empowered to grant, by letters patent, to persons associated for trading and other purposes, many of the privileges of a charter of incorporation, by limiting the liability of the patentees, and enabling their secretary or other officer to prosecute or defend in the name of the association; they may even sue one of their own members. Letters patent under the statute are equivalent to a private act, except when compulsory powers to take land, &c., are requisite.

These attempts did not enable an association to obtain by simple process of law a distinct personality, nor did they compel submission to the control of general regulations.

In 1826 the 7 G. 4, c. 46, was passed, enabling joint-stock banking companies to obtain the power of suing and being sued by a public officer on certain conditions and making certain returns.

Since 1844, when 7 & 8 V. c. 110, was passed, various enactments have been made for the formation, regulation, and winding-up of joint-stock companies.

A joint-stock company may be defined as an association of individual members, or a qualified corporation constituted by the act of the members themselves, possessing and trading on a common capital, contributed by the members composing it, and divided into shares, of which each member possesses at least one, and which are transferable by the owner without the consent of the other members.

All companies formed since 1844 are obliged to be registered with the register of joint-stock companies, and can since then sue and be sued in their corporate names.

The acts 7 & 8 V. c. 111, 11 & 12 V. c. 45, and 12 & 13 V. c. 108, were passed in the years 1844, 1848, and 1849, to regulate the winding-up of companies, but the individual members were left liable to the full extent of their property for the debts of the company.

In 1855 an attempt was made by 18 & 19 V. c. 133, to limit the liability of companies, and in 1856 the 19 & 20 V. c. 47, amended and altered by 20 and 21 V. cc. 14, 49 & 80, and

by 21 & 22 V. cc. 90 & 91, was passed, consolidating and amending the various joint-stock company acts.

In 1862 the laws relating to the incorporation, regulation, and winding-up of trading companies and other associations, were consolidated and amended by 25 & 26 V. c. 89, which will be considered in Part III. of this chapter. It is not necessary that companies established prior to 1844 should be registered under the joint-stock companies acts; they have that option, but may instead be associated by mutual agreement, declared by a deed of trust and arrangement. But unincorporated companies or partnerships in trade or business for gain, if more than twenty persons, are required to be registered as a company.

The laws affecting such of these associations as have not exercised the option of being registered under the joint-stock company acts are generally the same as in common partnership. Each individual subscribing is a partner, liable for all the contracts of the company. But the articles of agreement and mode of managing unincorporated companies are usually different from common partnerships. The capital is generally divided into shares, whereof each party may hold one or more, but restricted to a certain number. Any partner can transfer his share, under certain limitations; but no partner can act personally in the affairs of the company, the general management being entrusted to officers, for whom the whole company are responsible. The articles of agreement may limit the powers of the members towards each other, but not their responsibility against the claims of a third party. Each member is liable for the whole amount of the company's debts, bound for their payment, and responsible, as such, to the bankrupt laws as a trader. In short, in every particular, except in the transferring of his interest in the joint stock to a stranger, a member of an unincorporated company is surrounded with the same rights and responsibilities as he would be in an ordinary partnership.

Another point in respect of unincorporated share-companies it is material to impress. A person, by becoming a subscriber to such companies, is legally disqualified to recover for work done on account of such associations, nor can he recover on any bill or note accepted by the director or secretaries of such associations; the acceptance of shares renders him a *partner* in the undertaking, and consequently cuts off his right of action against the firm into which he has entered.

The powers sometimes exercised by unincorporated and even unregistered companies of advertising for subscriptions and creating transferable shares, were always illegal at common law, and still continue so, subjecting the parties engaged in them, in addition to the ordinary liabilities of partnership and the penalties of the statute, to be indicted for nuisances, in pretending to act as corporations. But the legislature, with a view of

facilitating laudable undertakings by joint stock, has vested in the crown powers by which the necessity of an act of parliament in certain cases may be obviated.

It not unfrequently happens that in joint-stock adventures delusive prospects of gain are held forth to induce parties to join in such associations. But when persons have been led by the untrue or deceptive statements of a prospectus to become holders of shares in a company, the court of Chancery will annul a contract founded on such misleading. This was the decision of the lords justices in the case of *Kisch* v. *The Central Railway Company of Venezuela*. Lord Justice Turner said, that in considering such a document as a prospectus of a company, allowance must be made for some latitude of statement. It was, unfortunately, so universally known and understood that the prospectus of a company never, in fact, contained a strictly accurate account of its advantages, that the validity of bargains founded upon such instruments could not properly be tried by as strict a test as might be applied in other cases. It was not because a prospectus contained exaggerated views of the advantages of the company to which it related, or that it contained some casual or trifling errors or inaccuracies, that the court would be justified in setting aside a bargain founded upon it. On the other hand, the court expected and required that where a contract was founded upon statements made by one of the parties to it, those statements should be fair, honest, and *bonâ fide*.

II.—BANKING COMPANIES.

By 7 & 8 V. c. 32, s. 21, it was provided that every banker should on the 1st January in every year, or within 15 days after, make a return to the Board of Inland Revenue, of the name, residence, and occupation of every member of the firm, of the name of the firm, and of the place where the business is carried on; the Board is required to publish such return in a local newspaper on or before the 1st March; and by 20 & 21 V. c. 49, s. 12 (which has been repealed except as to the part of s. 12 quoted by 25 & 26 V. c. 89), it is provided that it may be lawful to form banking partnerships of any number of persons not exceeding ten.

The 25 & 26 V. c. 89 (The Companies Act, 1862), (see next Part), affects banks, but the sections 4, 182 and 188 of this act relate exclusively to banks, and therefore it is necessary to set them out here. First, s. 4 provides that no company or association consisting of more than ten persons shall be formed to carry on the business of banking, unless it be registered under the act as a company, or be formed in pursuance of some other act or of letters patent. Secondly, s. 182 provides that no bank-

ing company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof, and if necessary the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company.

Thirdly, s. 188 provides that on registration of banking company with limited liability, notice is to be given to customers.

Certain banking copartnerships registered and entitled to issue their own notes, and by 7 & 8 V. c. 32, privileged for a period to sue and be sued in the name of any one of their public officers; such firms, if they discontinue to issue their own notes, are, by an act of 1864, the 27 & 28 V. c. 3, still enabled to sue and be sued by their public officer. Act not to empower any bank to carry on business in London.

By 30 V. c. 29, it is declared expedient to make provision for the prevention of contracts for the sale and purchase of shares and stock in joint-stock banking companies, of which the sellers are not possessed, or over which they have no control.

Section 1 enacts that all contracts, agreements, and tokens of sale and purchase which shall, from and after the first day of July, 1867, be made or entered into for the sale or transfer, or purporting to be for the sale or transfer, of any share or shares, or of any stock or other interest, in any joint-stock banking company in the United Kingdom of Great Britain and Ireland, constituted under or regulated by the provision of any Act of Parliament, Royal Charter, or Letters Patent, issuing shares or stock transferable by any deed or written instrument, shall be null and void to all intents and purposes whatsoever, unless such contract, agreement, or other token shall set forth and designate in writing such shares, stock, or interest by the respective numbers by which the same are distinguished at the making of such contract, agreement, or token on the register or books of such banking company, as aforesaid; or where there is no such register of shares or stock by distinguishing numbers, then unless such contract, agreement, or other token shall set forth the person or persons in whose name or names such shares, stock, or interest shall at the time of making such contract stand as the registered proprietor thereof in the books of such banking company: and every person, whether principal, broker, or agent, who shall wilfully insert in any such contract, agreement, or other token, any false entry of such numbers, or any name or names other than that of the person or persons in whose name such shares, stock, or interest shall stand, as aforesaid, shall be guilty of a misdemeanor, and be punished accordingly, and, if in Scotland, shall be guilty of an offence punishable by fine or imprisonment.

By s. 2, joint-stock banking companies are bound to show their

list of shareholders to any registered shareholder during business hours, from ten of the clock to four of the clock.

The act does not extend to shares or stock in the Bank of England or the Bank of Ireland.

LIABILITY OF BANK DIRECTORS.—The case of *Scott* v. *Dixon*, arising out of the failure of the Liverpool Borough Bank, and the decision of Baron Martin in August, 1858, in favour of the plaintiff, shows the onerous liabilities of directors who lend themselves to fraudulent representations of the affairs of a bank, with a view to raise the market price of shares and tempt purchasers. The action was brought to recover the value of certain shares which the plaintiff had purchased on the faith of a report issued by the directors, and which represented the bank to be in a solvent condition, when they actually knew it was involved in hopeless debt, and irretrievably ruined. The verdict of the jury was in favour of the amount claimed, and the judge expressed a hope that it "would be a warning to the whole country." That men are bound by their representations, is conformable to the dictum of Lord Mansfield, when, on a business transaction, he said, "it shall be as represented to be."

It may be well to mention here that in 1871 an act (34 & 35 V. c. 17) was passed which provides that the several days in the schedule mentioned shall be kept as close holidays in all banks in England and Ireland and Scotland respectively, and all bills of exchange and promissory notes which are due and payable on any such bank holiday shall be payable, and in case of non-payment may be noted and protested, on the next following day, and not on such bank holiday; and any such noting or protest shall be as valid as if made on the day on which the bill or note was made due and payable; and for all the purposes of the act the day next following a bank holiday shall mean the next following day on which a bill of exchange may be lawfully noted or protested.

When the day on which any notice of dishonour of an unpaid bill of exchange or promissory note should be given, or when the day on which a bill of exchange or promissory note should be presented or received for acceptance, or accepted or forwarded to any referee or referees, is a bank holiday, such notice of dishonour shall be given and such bill of exchange or promissory note shall be presented or forwarded on the day next following such bank holiday.

This act also provides for the appointment of special bank holidays by royal proclamation, and that the day appointed for any bank holiday may be altered by order in council.

The schedule to this act is as follows:—

Bank Holidays in England and Ireland.—Easter Monday; the Monday in Whitsun week; the first Monday in August; and the 26th day of December, if a week-day.

Bank Holidays in Scotland.—New Year's day; Christmas day

(if either of these days falls on a Sunday, the next following Monday shall be a bank holiday); Good Friday; the first Monday of May; and the first Monday of August.

III.—THE COMPANIES ACTS OF 1862 & 1867.

The Companies Act, 1862 (25 & 26 V. c. 89) is divided into nine parts, relating to the constitution and incorporation of companies and associations—to the distribution of the capital and liability of members of companies—to the management and administration of companies and associations and the winding-up of the same—to the Registration Office—to the application of the act to companies registered under former joint companies acts—to companies authorised to be registered under the new act, and the application of the act to unregistered companies. The act commenced November 2, 1862, from which date, with exceptions, former acts are repealed. But by s. 206, no repeal enacted is to affect anything duly done under the acts repealed—the incorporation of any company registered—any right or privilege acquired or liability incurred—or any penalty, forfeiture, or other punishment incurred under repealed acts. By ss. 207 and 208, there is a saving for proceedings under winding-up acts, and of any conveyance, mortgage, or other deed made in pursuance of repealed acts.

Under this statute insurance and all other companies are included. Petitions to wind-up companies must be presented to the court of Chancery, and may by that court be referred to the court of Bankruptcy. And seven or more persons associated for any lawful purpose, may, by subscribing their names to a memorandum of association, form an incorporated company, with or without limited liability. An annual list of members of a company is to be forwarded to the registrar of joint-stock companies, and the same is to be open to inspection. Power given as to the apprehension and examination of persons suspected of having property in their possession belonging to a company. Provisions framed to protect the public from adventurers getting up companies, and to reach delinquent directors, and prevent their flight. The court may at any time, before or after it has made an order for winding-up a company, upon proof that there is probable cause for believing that any contributor is about to quit the United Kingdom, or otherwise to abscond, or to remove or conceal his goods, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributor to be arrested, and his books, papers, moneys, securities for moneys, goods and chattels, to be seized, and him and them to be safely kept until such time as the court may order. The court has likewise power to assess damages against delinquent directors and other officers for any breach of trust, or misapplication of the funds; and, not-

withstanding the offence is one for which the offender is criminally liable, he may be ordered to pay a sum towards the assets of the company by way of compensation for his misconduct. For a falsification of books or of accounts, an imprisonment of two years with hard labour is provided.

This elaborate statute, with its schedules of fees payable on registration, and the getting up and management of companies, occupies twenty-five pages of the statutes at large, and constitutes a complete legal guide to this division of commercial law.

The 27 V. c. 19, enables joint-stock companies carrying on business in foreign countries to have an *official seal* to be used in such countries. Any company under the Companies Act may have an official seal, such seal being a fac-simile as nearly as possible of the common seal of the company, except that on the face must be inscribed the name of every place for which it is to be used. Agents may be empowered to affix the seal abroad to any deed or contract. Person affixing seal to document to certify the date when so affixed. Companies not to exercise powers under this act, unless authorized by their articles of association.

These acts were amended by 30 & 31 V. c. 131, and the act of 1867 is to be construed as one with the principal act of 1862. By s. 5 of that act, the following modifications are to be made in the 38th section of the principal act, with respect to the contributions to be required in the event of the winding-up of a limited company under the principal act, from any director or manager whose liability is, in pursuance of this act, unlimited :

1. Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding-up a member of an unlimited company ;

2. No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding-up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company ;

3. No contribution required from any past director or manager in respect to any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company ;

4. Subject to the provisions contained in the regulations of the company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and the expenses of winding-up.

in the event of the winding-up of any limited company, if it think fit, may make to any director or manager of any whose liability is unlimited the same allowance by off as under the 101st section of the principal act it to a contributory where the company is not limited.
y company limited by shares may, by special resolution, fy the conditions contained in its memorandum of asso- uthorized so to do by its regulations as originally framed l by special resolution, as to reduce its capital; but no ion for reducing the capital of any company shall come ion until an order of the court is registered by the joint-stock companies.

CHAPTER VIII.

Partners.

rs are mercantile associations, in which two or more e to share equally, or in other proportion, the profit any trade, bargain, or speculation. The object of the agreement may be anything that is lawful; since any r an unlawful object is void. To constitute a valid and to make a person liable as a partner, there agreement between him and his colleagues to share in rofit and loss; or he must have permitted them to use nd to *hold him out* as jointly liable with themselves. ll the partners appear ostensibly to the world, constitut- called the *house* or *firm;* but moneyed men sometimes iderable sums in trade without taking any part in the , of the business or suffering their names to appear: i are called *dormant* or *sleeping* partners. No partner, consent of the firm, can transfer his share to another ıtroduce a new member into the partnership. Each rever, may, upon proper warning, withdraw from the mand payment from them of his common stock.
i agreement to share profit and loss is essential to con- ership, yet, if one take a moiety of the profits without ill, by operation of the law, be made liable to losses,

of persons agreeing to subscribe sums of money for of obtaining a bill in parliament to make a canal or rtners in the undertaking; and, therefore, a subscriber their surveyor could not maintain an action for work in that character, on account of the partnership, any of the other subscribers, 1 *B. & C. 74.*
no express *stipulation as to the management* of part-

nership property, the majority must decide as to the disposition and management of partnership concerns.

Each partner is not only entitled to his proportion of the partnership estate, according to express agreement, or what he originally contributed, but he has a lien upon it for any sum of money advanced by him to, or owing to him from, the partnership.

A written agreement is not necessary to constitute a partnership. The acts of the parties, where there is no partnership contract in writing, may be the evidence of the contract.

II.—LIABILITIES OF PARTNERS.

In partnerships, the individual partners are liable for the debts of the joint trade without limitation, unless when incorporated; and then the members are liable for their respective shares; or, according to 1 V. c. 73, in such other degree as the charter of incorporation may prescribe.

In general, it may be stated that the acts of one partner, in the way of sale, purchase, promise, or agreement, when performed without collusion and in violation of no public law, and in course of the partnership business, are binding on the whole firm. And this responsibility of partners for the acts of each other in the course of trade cannot be limited by any agreement, covenant, or promise in the articles by which the partnership is constituted.

This principle is, however, subject to some qualification. If one partner can show a *disclaimer*, he will be relieved from responsibility. Or, if there be any particular speculation which he disapproves of, by giving distinct notice to those with whom his partners are about to contract, that he will not, in any manner, be concerned in it, they cannot have any claim upon him, as proof of the notice would rebut his *primâ facie* liability. Neither is there any joint liability for the debt of *one* partner, unless contracted in the course of the partnership business. So, if the partnership effects are taken and sold on an execution against one partner only, the sheriff is to pay over to the other partners a share of the produce proportioned to their shares in the partnership effects.

Though a small share in the business renders the shareholder a general partner, and subjects him to the same responsibility as if he held a more considerable share, yet a share in a ship, the copyright of a book, or other *specific object*, does not constitute a general partnership; and, therefore, the responsibility is limited to that particular object.

But the mercantile principle that any share of profit in a firm makes individual partners liable for all the debts of a joint trade, unless when incorporated, has been qualified by an act of 1865, the 28 & 29 V. c. 86. By s. 1, "the advance of money by way of loan to a person engaged or about to engage in any

lertaking upon a contract in writing with such person
der shall receive a rate of interest varying with the
all receive a share of the profits arising from carrying
le or undertaking, shall not of itself constitute the
tner with the person or the persons carrying on such
lertaking, or render him responsible as such." Neither,
any contract for the remuneration of a servant or
erson engaged in any trade or undertaking by a share
s, of itself render such servant or agent responsible as
erein, nor give him the rights of a partner. The
ild of a deceased partner receiving by way of annuity
he profits is not thereby made a partner, subject to the
partnership, s. 3. Nor does the receipt of a portion
s by annuity or otherwise in consideration of the good-
siness subject to the liabilities of partnership. By s. 5,
of a trader being adjudged a bankrupt, or entering
rangement to pay his creditors less than twenty
the pound, or dying insolvent, the lender of afore-
not entitled to recover any portion of his principal
nor is any vendor of a goodwill entitled to recover any
l the claims of the other creditors of the trader for valu-
ration in money or money's worth have been satisfied.
or *sleeping* partners are liable, when discovered, to the
debts. But it would seem that a sleeping partner is
ible for any bill of exchange accepted by the acting
their names, unless such bill relate to the business of
hip; because the sleeping partner had neither privity
in the bill, not being accepted in a partnership trans-
was the bill taken on his credit, as he was not known
ner, 2 *Car.* & *Pay.* 188.
of one partner, in drawing bills of exchange, endorsing
payable to the firm, and making and endorsing pro-
es, when they concern the joint trade, bind the firm.
herwise if they concern the acceptor only in a disjoint

, as such, cannot bind his co-partner by deed without
mplied authority, 7 *T. R.* 476.
ner may maintain an action for money received against
artner, for money received to the separate use of the
wrongfully carried to the partnership account, *Smith*
2 *T. R.* 207.
firm may become bankrupt, or some or one only of the
y become so whilst the remaining members continue
pon the bankruptcy of one partner under a separate
gainst him, his assignees take all his separate property,
interest in the partnership property; and if a joint fiat
t all, the assignees take all the joint property and all
property of each individual partner.

III.—REGISTRATION OF PARTNERSHIPS.

The Companies Act of 1862, the 25 & 26 V. c. 89, requires partnerships of a certain number to be registered. By s. 4, no partnership of more than ten persons is to be formed for *banking purposes*, unless it is registered under the act, or is formed under some other statute or letters patent. Nor is any partnership of above twenty persons to be formed for the *acquisition of gain* unless it is registered, or is formed under an act of parliament or letters patent, or constituted for the working of mines within the jurisdiction of the Stannaries.

Although a partnership is not bound to be registered unless its members amount to twenty and has gain for its object, yet any seven or more persons associated for a lawful purpose may, by s. 6, be so registered, with or without limited liability.

IV.—DISSOLUTION OF PARTNERSHIP.

By the death of one partner, the partnership is dissolved, unless there is an express agreement for the transmission of an interest in the business to the deceased partner's family, or for the continuation of it by his executor or administrator.

Bankruptcy, outlawry, or attaint for treason or felony, constitutes a dissolution of partnership.

Where the partnership is *special*, or formed for a single dealing or transaction, as soon as that is completed the partnership is at an end of course. But where a general partnership is entered into for an unlimited time, it may be put an end to at any time by either of the parties, so that he does not break off with some sinister view.

A partnership may be dissolved by the expiration of the time for which it was constituted, by award of arbitrators, by the insanity of one of the firm, or by the gross misconduct of a partner, which will induce a court of equity to annul the contract.

An advertisement in the *London Gazette* is not sufficient announcement of the dissolution of partnership; notice ought to be sent to all persons with whom the firm had dealings while in partnership.

If a partner, when he retires, draw out of the partnership stock all that he had paid in, the house being insolvent at the time, he will be obliged to refund to the creditors of the other partner.

CHAPTER IX.

Principal, Factor, Agent, and Broker.

A FACTOR is the agent of a merchant or trader, constituted by letters of attorney, and whose power and responsibility are generally limited by the commission of his principal.

If a factor buy goods on account of his principal, where he is used so to do, the contract will bind the principal to a fulfilment of the bargain. But where goods are bought or exchanged without order, it is at the merchant's option whether he will accept of them or turn them on the factor's hands.

If an agent, by the adventure of his principal's property, not authorised by the usages of trade or the terms of his employment, and without the express consent of his principal, occasion loss to the principal, he is answerable to the amount of the damages sustained; but mere negligence is not sufficient to render an agent liable; it must be gross carelessness, fraud, or a breach of positive orders.

If an agent deals or speculates with the effects of the principal, whatever advantage or profit accrues from the transaction is for the benefit of the principal. So, if an agent employed to purchase an estate buys it for himself, he is considered only a trustee for the principal, 1 *Russ. & M.* 53.

An agent employed to sell cannot be a purchaser; nor if employed to purchase can he be the seller, unless by the express consent of the employer.

An agent has a lien on the property of his principal, or on his securities, as well for incidental charges as the general balance due to him.

Prior to the alteration in 1825, the law was extremely hard upon *third* parties, in their transactions with factors or agents. *First*, in case of advances made to factors or agents, upon security or merchandise, in ignorance of their not being the owners of the property, the party so advancing might be deprived of his security by the principal. *Secondly*, in case of purchases of merchandise from factors or agents not invested with the power of sale, though that factor is unknown to the purchaser, yet the purchaser would be liable to pay a second time the value of the merchandise. To remove these hardships, the 4 G. 4, c. 83, and the 6 G. 4, c. 94, were passed, establishing the validity of contracts made in relation to merchandise entrusted to factors or agents.

Under the 6 G. 4, all persons entrusted for consignment or sale with goods, and who shall have shipped them in *their own names*, and any person in whose name such goods shall be shipped by any other person, shall be deemed the OWNERS *so far* as to entitle the consignee to a lien thereon, in respect of any money advanced to the person in whose name the goods shall be shipped, or in respect of any money or negotiable security received by him to the use of such consignee, in like manner as if true owners thereof: *provided* the consignee had no notice at or before the advance of the money, by the bill of lading, or otherwise, to the contrary; the person also in whose name the goods are shipped is to be deemed the owner, unless the contrary be shown.

Persons entrusted with, and in possession of, any bill of lading,

India warrant, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, warrant or order for delivery of goods, shall be taken to be the owner of the goods mentioned in such documents, so as to give validity to any contract to be entered into by such person for the sale thereof, or for the deposit or pledge thereof, as security for any advance made upon the faith of such documents; provided the persons making the advance have no previous knowledge that the person so entrusted is not the actual and real owner of such goods or merchandise.

Persons may take, in deposit or pledge, any goods or merchandise so entrusted as security for any debt or demand; but they do not thereby acquire a greater power over the deposit than the factor possessed at the time of making the deposit.

All contracts and payments made with agents so entrusted are binding on the principal, if they be made in the ordinary course of business; or out of that course, if within the agent's authority, and the parties had no notice that such agent is not authorized to sell the goods or receive the purchase-money.

Nothing in the act prevents the principal from recovering his goods from his factor before they have been sold, deposited, or pledged; or from the assignee of the factor, in the event of his bankruptcy; nor from recovering the purchase-money, in the event of the sale, or from recovering the goods by repaying any sum of money or negotiable instrument advanced upon them; provided, in case of the bankruptcy of the factor, the principal shall be held to have discharged any debt due *by him* to the estate of the bankrupt.

By 5 & 6 V. c. 33, the law is amended relating to advances *really* made to agents entrusted with goods, and facilitates and gives protection to the common practice of making advances on the security of goods or documents to persons known to have possession thereof as agents only. Under this act any agent who is in possession of goods, or of the documents of title to them, is to be held in law as the owner, to the effect of giving validity to any contract or agreement by way of pledge, lien or security, *really* made by any person with such agent. The agent may receive back commodities or titles which have been pledged for an advance, and may replace them with others; but the lender's lien is not to extend beyond the value of the original deposit.

The documents which are held to authorize the agent in disposing of the property represented by them, and the transference of which is a sufficient security to the lender, are, any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery of goods, or any other document used in the ordinary course of business as proof of the possession or control over the goods. The property represented by the document is held to be conveyed as soon as the document is transferred, though the property is not in the agent's hands; and an advance

of money on consignment or indorsement is valid; though the consignment or indorsement does not take place at the date of the agreement. A contract by the agent's clerk, or any person acting for him, is binding.

II.—BROKERS.

These are agents who negotiate bargains and sales between merchants and others on commission, and chiefly differ from factors in not having possession of the goods bargained for. They are of several sorts. 1. Those who act as agents for the sale of commodities or of stock in the public funds, who are regulated by statute. 2. Ship-brokers, who regulate the sale of ships, procure cargoes on freight, and adjust the terms of charter-parties. 3. Insurance brokers negotiate between the merchant or freighter, and the underwriter or insurer, settling the terms of the insurance against loss or damage. 4. Bill-brokers, whose traffic is in bills of exchange, discounting them for the holders, or who buy, sell, and deal with merchants in respect to bills, settling with those who draw on, and buying bills of those who remit to, foreign ports; from their knowledge of the rate of exchange, they fix the rate of exchange in these securities, by which merchants consider themselves bound. 5. Share-brokers, who transact business and effect transfers in railway and canal shares, in the shares of joint-stock banks, gas, water, and other local work, which are established by a numerous body of proprietors. The share-brokers have increased of late years largely in numbers, not only in London, but in all the large towns, where formerly there were scarcely any of this class. 6. Persons who appraise goods, sell or distrain furniture for rent, are called brokers, though entirely differing in their occupation from the preceding commercial agency; they must have an excise license, and conform to the regulations mentioned. When the agreement for sale or purchase has been made, the broker gives to the seller a memorandum of the sale, to the buyer a memorandum of the purchase, and the delivery of these notes, which are called *bought* and *sold notes*, binds the bargain, and confers on the principal the same rights and liabilities as if the transaction had been carried on by himself in person. In London and Bristol brokers are licensed by their respective corporations, and are subject to penalties for acting without license, for not registering their contracts, or not revealing the names of their principals, or for dealing in commodities on their own account, or for taking any other profit than their brokerage or commission. (6 Anne, c. 16; 3 G. 2, c. 31; 57 G. 3, c. 60.) They carry about them a silver medal, as evidence of their qualification, are bound by oaths, and give bond for the faithful execution of their office.

Ship-brokers form an important class in all great mercantile

ports. It is their business to procure goods on freight, or a charter for ships outward bound; to enter and clear vessels at the custom-house; to collect the freight on goods, and generally to take an active part in all business between merchants and ship-owners. Most ship-brokers are also *insurance brokers*, in which capacity they procure the names of the underwriters to policies of insurance, and settle the conditions of the risk and the rate of the premium. Unlike other brokers, an insurance broker, though he has given up the name of his principal, continues personally liable to the underwriters for the amount of the premium. But he is not liable to make good to the owner of the ship or merchandise, who must look to the underwriter in the event of loss.

A ship-broker is not within the meaning of the statutes for the regulation of brokers, 4 *Bing.* 301; but a stock-broker who transacts business in the public funds is bound by them. Stock-brokers are paid by a commission, limited by 10 Anne, c. 19, to 2*s.* 6*d.* per cent, which they are entitled to deduct from the produce of the sale.

An act of 1870, the 33 and 34 V. c. 60, relieves brokers from the supervision of the court of mayor and aldermen of the city of London.

CHAPTER X.

Trustees.

A TRUST is a confidence reposed by one person in some other person, not of necessity expressly, for it may be caused by implication of law. The person in whom the confidence is placed, and who has the legal interest in the property, is called "the trustee," and the person for whom or in whose favour the trustee holds the estate, or any interest therein, is called the *cestui que trust*, who has no remedy but by proceedings in any court invested with equitable jurisdiction, as neither the common law nor spiritual courts have any cognizance in matters of trust.

Trusts are, (1) simple, as where property is vested in one person in trust for another, in which case the *cestui que trust* has the right to be put into actual possession; (2) special, as where a conveyance is to trustees upon trust to sell for the payment of debts. Trusts are also for lawful purposes, as a trust to pay debts, &c.; and for unlawful purposes, as a trust to defraud creditors. There are also public trusts, as distinguished from private trusts. The duration of a private trust is by law limited to the life or lives in being at the time of the commencement of the trust and twenty-one years afterwards. A public (or charitable) trust, on

the other hand, is itself of a permanent character, and cannot be limited in duration.

A trust can be created by the act of a party or by operation of law. A trust by the act of the party must be created by some person, generally called the settlor, who may, if he is competent to deal with the legal estate, vest it in a trustee to execute the settlor's intention.

A trustee must be capable of taking and of holding the trust property. The sovereign may be a trustee, but there seems to be no means of enforcing the trust against the crown. A corporation can be a trustee for personal property, but not conveniently for real property, as no real property can be conveyed to a corporation upon trust without the license of the crown, although the court of Chancery has ample jurisdiction to compel the administration of trust property already vested in a corporation upon the trust attached to it. The Bank of England cannot be a trustee. It refuses and cannot be compelled by law to notice any rights but those of the legal proprietors in whose names the stock is standing. A married woman may be a trustee, but this is inadvisable, as she cannot pass the legal estate without the concurrence of her husband, who is answerable for her acts and liable for her breaches of trust, and who therefore would be obliged, for his own protection, to see to the manner in which she discharges her office. An unmarried woman may be a trustee, but the disadvantages that have been already stated attach to her if she marries. An infant ought not to be appointed a trustee, as he has no legal discretion, and cannot be guilty of a breach of trust. An alien, until lately, could be a trustee of personal estate only, but since 1870 he can be a trustee of real estate also; for by 33 & 34 V. c. 14, s. 2, he is empowered to hold and dispose of all real and personal property (with certain restrictions as to rights) as if he were a British subject. A person domiciled abroad ought not to be a trustee, nor are bankrupts and insolvents proper trustees, though they are not absolutely disqualified. *Cestui que trusts* are not disqualified, nor are relatives; but still it may be, in a great many instances, inadvisable to appoint them, and the court of Chancery is generally unwilling to do so if it can avoid it.

Care should be taken to choose fit trustees, and also a sufficient number of trustees for safety sake.

On the death of one of the trustees, a new trustee should at once be appointed, unless there are more than two original trustees, when this is not important, so long as more than one trustee is living.

A trustee not having the whole power, and being obliged to join in receipts, is not chargeable for money received by a co trustee; but where they join in a receipt, and it cannot be distinguished what was received by the one and what by the other, they shall both be charged with the whole. Also, if a trustee be privy to

the embezzlement of the trust-fund by his associate he shall be charged with the amount.

Trustees are accountable for the interest which they either do or might make from the employment of the money in their possession. They are also accountable for the whole profits they may derive from trading with the trust fund.

As their office is considered purely honorary, they are not entitled to any allowance for their trouble in the trust. Equity will occasionally allow remuneration for the management of the trust-fund, where the services of the trustee have been very beneficial, or the duties onerous, as in collecting weekly rents.

Courts of equity will cause trustees, upon their application, to be relieved, if upon inquiry it be found that they have done nothing to render them liable at a future period.

The estates of trustees deceased, who have not acted in conformity with the trust, are liable for the consequences.

Debtors sometimes execute an assignment to trustees of the whole or part of their property for the benefit of creditors. Such trusts can extend only to debts actually owing at the time of executing the deed: and though the assignment may purport to be only for such creditors as agree to execute it within the year, yet it is competent to any creditor to come in, even after the year, provided his debt existed at the time of making the deed: but after the expiration of a year, it would seem creditors may be compelled either to come in or renounce all benefit from the trust, 1 *Vernon*, 260. Where personal property is bequeathed upon trust to executors, the probate of the will is an acceptance of the trust.

By 10 & 11 V. c. 96, means are provided for securing trust-moneys, and for relieving trustees from the responsibility of administering trust-funds, in cases where they are desirous of being so relieved. Trustees, executors, or administrators, or other persons, having in their hands any moneys belonging to any trusts whatsoever, or the major part of them, may, on filing an affidavit shortly describing the instrument creating the trust to the best of their belief, pay the same, with the privity of the accountant-general (now the paymaster-general by 35 & 36 V. c. 44, s. 4) of the court of Chancery, into the Bank of England, to the account of the accountant-general in the matter of the particular trust, and also the court of Chancery may make orders on petition, without bill, for the application of trust-moneys so paid, and for the administration of the trusts generally to which the moneys related. It is further provided that the lord chancellor, with the assistance of the master of the rolls, or one of the vice-chancellors, shall have power to make such orders as from time to time shall seem necessary for better carrying the provisions of this act into effect. To remove certain difficulties under this statute, the 12 & 13 V. c. 74, enacts that the court of Chancery may, upon applica-

tion by a majority of trustees or executors, order payment or transfer of trust-moneys, stock, or securities, into the court.

The 13 & 14 V. c. 60, was passed in 1850, to consolidate and amend the laws relating to the transfer of real and personal property vested in mortgagees and trustees. It empowers the lord chancellor to make an order directing that lands or stock, &c., vested in any trustee or mortgagee who may be a lunatic or an infant, or who, being a sole trustee, may be out of the jurisdiction, or whose death cannot be ascertained, or who may refuse to convey or assign trust property to the person properly entitled to it, may be vested in such person or persons in such manner and for such estate as it may think fit. It also gives the court of Chancery considerable power of the same sort in the cases of joint trustees residing out of the jurisdiction, or refusing to act properly in the execution of the trust.

Money payable to infants or lunatics in discharge of lands, stock, &c., dealt with under the act by the court, may be paid into the Bank of England in the same manner as was provided by 10 & 11 V. c. 96, for the payment by trustees of trust-money into court.

By 15 & 16 V. c. 55, the provisions of the last act are extended in various ways, and the court of Chancery is given power to appoint new trustees in lieu of persons convicted of felony, and to vest the trust estate in such new trustees. And it can also, in explanation of a section in the last act, in all cases where it is expedient, make an order appointing new trustees, where it has been found impracticable or inexpedient to do so without the assistance of the court, *whether there be any existing trustee or not.*

By an act of 1859 (22 & 23 V. c. 35), further to amend the law of property and to relieve trustees, a *bonâ fide* sale under a power of an estate with timber thereon or any other articles attached thereto, is not to be avoided by reason of mistaken payment to the tenant for life of a portion of the purchase-money as the value of such timber or other articles (s. 13); and when by any will which shall come into operation after the passing of the act, a testator shall have charged his real estate with the payment of his debts, or of any legacy or sum of money, and shall have devised his estate so charged to trustees for the whole of his interest in it, the trustees are empowered, notwithstanding any trusts actually declared by the testator, to raise such debts, legacies, or money, by a sale of the whole or part of the estate (s. 14). The executors named in the will, where there is no sufficient devise, are also given a power of raising money to pay such a charge as aforesaid out of the estate so devised to trustees.

No trustee, executor, or administrator, making any *bonâ fide* payment under a power of attorney, is to be liable by reason of the death of the person giving the power.

By s. 30, any trustee, executor, or administrator, is at liberty to apply by petition to any judge of the court of Chancery, or by summons on a written statement to such judge in chambers, for the opinion, advice, or direction of such judge respecting the management and administration of the trust property or the assets of any testator or intestate; and if he acts upon such opinion, advice, or direction, he is to be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor, or administrator, in the subject-matter of the application, provided that he has not been guilty of any fraud, wilful concealment, or misrepresentation in order to obtain such opinion, advice, or direction. By s. 31, every trust instrument is to be considered to contain clauses for the indemnity and reimbursement of the trustees. By 23 & 24 V. c. 38, s. 9, when any trustee, executor, &c., shall apply for advice or direction of a judge under 22 & 23 V. c. 35, the petition or statement shall be signed by counsel, and the judge, by whom it is to be answered, may require the applicant to attend him by counsel, either in chambers or in court, when he deems it necessary to have the assistance of counsel. Trustees and executors to invest trust-funds in the stocks in which costs under the control of court of Chancery are invested, s. 11. Order to take account of debts of deceased, under 13 & 14 V. c. 35, s. 19, may be made immediately after probate granted.

The 23 & 24 V. c. 145, gives to trustees, mortgagees, and others, certain powers now commonly inserted in settlements, mortgages, and wills. By s. 1, trustees empowered to sell, may sell in lots, and either by auction or private contract. Sale may be made under special conditions, and trustees may exchange or buy in. Trustees exercising power of sale empowered to convey. Moneys arising from sale to be laid out in other lands, or in payment of encumbrances. Until purchase of lands, money to be invested at interest. Trustees of renewable leaseholds may renew, s. 8. Remaining sections relate to powers incident to mortgages, to the investment of trust-funds, the appointment and powers of trustees, executors, &c.

INVESTMENTS.—A trustee may not invest on personal security or in stock of a private company, unless he is specially authorized to do so in the instrument creating the trust. By Lord St. Leonards' Act (22 & 23 V. c. 35, s. 32), trustees, executors, and administrators, are authorized, unless expressly forbidden in the instrument creating the trust, to invest in the stock of the Banks of England or Ireland, or in East India stock, or on real security in any part of the United Kingdom, which includes Ireland. By 23 & 24 V. c 38, s. 12, the section just stated is made retrospective; and by s. 10, the court of Chancery is given the power to issue general orders as to the investment of cash subject to its jurisdiction; and by s. 11, trustees, executors, or administrators, having power to invest upon government security or railway stock, funds,

securities, may invest in any of the investments in which cash ay be invested under such order in the court; and by a general der, made in pursuance of this authority, and dated 1st February, 861, cash under the control of the court may be invested in ank stock, East India stock, exchequer bills, £2. 10s. per cent. nnuities, and upon mortgage of freehold and copyhold estates in ngland and Wales, as well as consolidated, reduced, and new £3 er cent. annuities; and every trustee, executor, or administrator, hen not expressly forbidden in the instrument creating the trust, ay now invest any trust-fund in his possession or under his control y 30 & 31 V. c. 132, s. 2, in any securities the interest of which s guaranteed by parliament, and by 34 & 35 V. c. 47, s. 13, in onsolidated stock issued by the Metropolitan Board of Works. A trustee, if expressly empowered, may lend on personal security; ut joint trustees may not lend to one of themselves, nor may rustees accommodate a person. The tenant for life is not to be avoured, and all the conditions annexed to a power under which rustees may be investing, must be strictly observed. Trustees ay not, unless expressly authorized, invest in foreign funds, such s United States stock or bonds. If trustees lend upon mort-ages, they should attend to the sufficiency of the value and the itle of the borrower. Trustees may not lend on mortgage to one f themselves.

The Debenture Stock Act, 1871 (34 & 35 V. c. 27) enacts that here there is a power to trustees, executors, or administrators, to nvest in mortgages or bonds of a railway or any other company, uch powers shall, unless the contrary is expressed in the instru-ent creating the trust, include a power to invest in the debenture tock of such company.

Trustees are also, by 30 & 31 V. c. 142, s. 24, empowered to pay oney into a county court to be invested as the act provides (see ounty Court).

As there are many cases in which the duties of a trustee are oubtful, and as he may be made personally liable for loss occa-ioned to the trust property by any unauthorized action of his, even hough he act in perfect good faith and obtain the best possible profes-ional advice, he should decline to act without the sanction of the ourt whenever his duty is not perfectly clear, and he will be allowed ll costs and expenses incurred by him in an application for that urpose, but not the costs of an appeal.

CHAPTER XI.

Executors and Administrators.

n executor is he to whom a man commits the execution of his ast will and testament.

If the testator make an incomplete will, without naming executors, or if he name incapable persons, or if the executors named refuse to act; in any of these cases the ordinary may grant administration to some person, and the duties of the *administrator* so appointed nearly coincide with those of an executor.

The personal property of a deceased person vests in his executor from the time of his death; in an administrator, from the time of the grant of letters of administration.

As to acts passed for the protection of executors and administrators, see the last chapter.

When a person dies *intestate*, the court of probate will grant administration to the next of kin. For example, of the goods of the wife to the husband, and of the husband's effects to the widow or next of kin, or to both, at discretion.

If a BASTARD die intestate, without wife or children, or if any other person die without kindred, the queen is entitled to the *personal* property as administrator; but in case of a bastard, it is now usual for the crown to grant administration to some relative of the bastard's father or mother, reserving a tenth part, or some small portion, as a recognition of its rights. The *real* estate falls to the lord of the fee, or the queen, subject to the wife's right of dower and incumbrances, and it is customary to dispose of it in the same way.

An executor may be appointed either by express words, or by words that amount to a direct appointment; but, though a person is appointed executor, he is not bound to act, unless he has performed the offices which are proper for an executor, as by paying debts due from the testator, or receiving any debts due to him, or giving acquittances, &c.

If there are many executors of a will, and only one of them prove the will, and take upon him the executorship, it is sufficient for them all; and even after the death of the acting executor, the right of executorship survives to them; but if two executors are appointed by will, and one of them prove the will, in the name of both, without the consent of the other, this will not bind him who refused the executorship, unless he administers.

If executors waste the goods of the testator, the court of Chancery will, on the application of creditors, appoint a receiver of the testator's effects, in order to protect them. Or if they retain money in their hands, they are chargeable with interest and costs, if any have been incurred; but they are not liable for the property of the deceased, unless it has been lost through wilful negligence, or without taking reasonable care to prevent such defalcation. Neither is one executor answerable for money received or detriment occasioned by his co-executor, unless it has been by means of some joint act done by them.

If a creditor make his debtor executor, it is an extinguishment of the debt; for an executor cannot sue himself; but still, in

equity, an executor who was indebted to the testator is bound to account for his debt to the estate of the testator.

II.—DUTIES OF EXECUTORS AND ADMINISTRATORS.

The first thing to be done is to bury the deceased in a manner suitable to his rank in life and the estate he has left behind him. In strictness, no funeral expenses are allowed against a creditor except for the coffin, tolling the bell, parson, clerk, and bearers' fees, but not for the pall or ornaments. But if there are *assets sufficient*, the allowance is regulated by the rank and property of the deceased.

It is the duty of the executor or administrator to apply for probate of the will or for letters of administration. Any will may now be proved in, or letters of administration granted by, the principal registry of the court of Probate, without regard to the abode of the testator.

A district registry of the court of Probate may grant probate of a will in common form or by letters of administration (Part II. chap. i. s. 3, p. 60). The will must be proved within six months after the death of the testator, under a penalty of £50, by 37 G. 3, c. 90.

Neither probate nor letters of administration will be granted until the probate duty payable in respect of the full value, without any deduction, of all the deceased's personal (including leasehold) property has been paid. The executor or administrator can at any time within three years of the death of the deceased obtain a return of probate duty in respect of any debts that have been actually paid, and the receipt of the payment thereof produced.

After obtaining probate, an inventory must be made of all the goods and chattels, whether in possession or action, of the deceased, which, if required, must be delivered upon oath, in the presence of two credible witnesses, and to which, if so delivered, no creditor is at liberty to object.

III.—DISPOSITION OF THE ASSETS.

All the debts and effects of the deceased collected in become assets in the hands of the executor, chargeable to creditors, legatees, and kindred of the deceased, and payable in the following order :—

1. The executor must pay all funeral charges, the expenses of proving the will, and other necessary outgoings, incurred in the execution of the trust. 2. He must pay all debts due to the queen. 3. Such debts as are due by particular statutes ; as money due for poor-rates, for post-office letters, or to a friendly society. 4. Debts of record on judgment of courts of law, and debts due on mortgage. 5. Debts due on special contracts, as for rent in arrear, and debts due on bond or covenant under seal, and debts on

simple contract, as promissory notes, bills of exchange, or verbal promises; for by 32 & 33 V. c. 46, all speciality and simple contract debts of deceased persons are to stand in equal degree after 1st January, 1870. And, lastly, legacies must be paid.

If an executor pays debts of a *lower* degree first, and should there be a deficiency of assets, he is bound to answer those of a higher nature out of his own estate.

With respect to the disposition of the *residue of testators*, it has been provided by 1 W. 4, c. 40, that executors, unless otherwise appointed in the will, shall only be deemed *trustees* of the undisposed residue for the benefit of such as would be entitled, under the Statute of Distributions, if the testator had died without a will. But this is not to prejudice the rights of executors to the residue, when there is not any person entitled to claim under the Statute of Distributions.

By 3 & 4 W. 4, c. 42, executors may bring actions for injuries committed to the *real* estate of the deceased during his life, and the contrary, against the executors for injuries to property, real or personal, by the testator. Executors suing in right of testator have been made liable to *costs* in case of nonsuit or verdict passing against them.

For procedure in Chancery in administration suits, see p. 78.

CHAPTER XII.

Husband and Wife.

MARRIAGE is a civil contract in which the wife, in respect of property and some other relations, partly loses her legal individuality, and becomes incorporated with, and subordinate to, her husband. Upon this principle, a man cannot grant anything to his wife without the intervention of trustees, or enter into covenant with her; for the grant would be to suppose her separate existence, and to covenant with her would be to covenant with himself.

The sanctity of the marriage contract has been heretofore determined by the principles and rules of the ecclesiastical courts, conformable to which the court for Divorce and Matrimonial Causes is guided, except in proceedings to dissolve marriages. The courts of common law and equity view unlawful or incestuous marriages only as immoralities, excepting the case of bigamy, which, though it has been a matter of ecclesiastical jurisdiction as respects the annulling of the marriage, is, by the statute law, classed as a crime of which the law takes cognizance.

For the validity of marriage are requisite:—1. The mutual consent of the parties. 2. The absence of all legal disability, arising out of previous marriage, relationship, or corporal infirmity;

poral infirmity ensuing after marriage will not vacate the
, because there was no *fraud* in the original contract;
of the ends of marriage, namely, the legitimate procreation
en, may have been answered. 3. The marriage rite must be
ed, as prescribed by the Marriage Act, between persons of
ind, of the age of fourteen in males, and twelve in females.
l will sometimes be a ground for annulling a marriage; as
ant of banns having been published, or license obtained,
alias names; but unless the name was assumed for the pur-
defrauding the other party or the parents, the circum-
f the marriage being in a fictitious name will not invalidate
ract. Error about the family or fortune of the individual,
produced by unfair representation, will not at all affect the
lidity of the marriage, 1 *Phil. E. C.* 137. And the wife
er husband's settlement, though the marriage is brought
y fraud on the part of the parish officers, 8 *B. & C.* 29.
iages may be dissolved by death or by divorce (see p. 62).

II.—POWERS OF THE HUSBAND.

he *personal* property, as money, goods, and household furni-
at was the property of the wife at the time of marriage,
s vested in the husband, and placed at his absolute disposal.
real property, the freehold and inheritance of the wife, the
l can only receive the profits during her life. The law
e like limited power over any real estate accruing to the
ring coverture.

arried woman has no authority to make a contract without
hority or assent of her husband, express or implied. If a
l or dispose of the goods of her husband, the sale is void;
e buy goods without his consent, he is not chargeable with
So, also, a note or bill drawn or endorsed by a married
is void.

sband may restrain his wife of her liberty in case of gross
aviour; but in case of unreasonable or improper confine-
he law will relieve the wife by *habeas corpus*.

e wife be injured in her person or property, she can bring
on for redress without the concurrence of her husband;
can she be sued without making the husband defendant.
eption to the rule is, when the husband has been transported
shed; for then he is dead in law.

6 & 17 V. c. 83, husbands and wives are made admissible
es in any judicial issue or inquiry; but this does not extend
inal trials (see *Evidence* and Part II. c. i. s. 4, p. 66).

eason the wife is admitted as witness for the crown against
band; so, also, in an indictment for forcible abduction
arriage; and in bigamy, though the first wife cannot be
, the second may, the second marriage being void.

Where the husband has allowed the wife to act as agent in the management of his affairs, or in any particular business, the representations and admissions of the wife, in the course of such agency, are admissible in evidence against the husband.

Thus, in an action against the husband for board and lodging, where it appeared the bargain for the apartments had been made by the wife, and that on a demand being made for the rent she acknowledged the debt, the plaintiff was held entitled to recover, 1 *Esp.* 142. So, also, the admission of the wife as to an agreement for suckling her child, was allowed to be evidence against the husband, *Stra.* 527.

A husband is bound to maintain his wife in *necessaries* according to his rank and estate; and if she contract debts for them, he is answerable. But if the wife voluntarily leave her husband, without sufficient cause and without his consent, he is not bound, on giving notice to a tradesman of his dissent to her absence. And with respect to the *necessaries* for which the husband is liable, they must be really such; for example, they must not be superfluous dresses, which the wife has no occasion for, nor articles of jewellery unsuited to the condition, rank, and income of the husband, 3 *B. & C.* 631. Though the wife is lewd, if she *cohabit with her husband*, he is chargeable for necessaries; and so he is if he desert her, or turn her away without reasonable cause, or compel her by ill-treatment to leave him, although he advertise her, and caution all persons not to trust her, or give particular notice to individuals not to give her credit, still he will be liable for necessaries furnished to her.

But if the wife *elope* from her husband and live in adultery, the husband cannot be charged by her contracts. And, although the husband was the aggressor, by living in adultery with another woman, and although he turned his wife out of doors, when there was not any imputation on her conduct, yet if she *afterwards commit adultery*, he is not bound to receive or support her after that time; nor is he liable for necessaries which may be provided for her after that time, 6 *T. R.* 603. Neither, when the husband turns his wife out of doors on account of her having committed adultery under his roof, is he liable for necessaries furnished after her expulsion. Yet, if he receive her again, his liability revives, and attaches upon contracts made by her after the reconciliation, 11 *Ves.* 536; 6 *Mod.* 172.

If a woman elope from her husband, though not in an adulterous manner, the husband is not bound.

The husband is liable to pay the wages of a servant hired by the wife, after the servant has performed the service with the knowledge of the husband, 1 *Esp.* 200.

By 31 & 32 V. c. 122, s. 33, when a married woman requires relief without her husband, the guardians of the union or parish, or the overseers of the parish, as the case may be, to which she

becomes chargeable, may apply to the justices having jurisdiction in such union or parish, in petty sessions assembled; and thereupon such justices may summon such husband to appear before them, to show cause why an order should not be made upon him to maintain his wife. And upon his appearance, or, in the event of his not appearing, upon proof of due service of such summons upon him, such justices may, after hearing such wife upon oath, or receiving such other evidence as they may deem sufficient, make an order upon him to pay such sum weekly, or otherwise, towards the costs of the relief of the wife, as, after consideration of all the circumstances of the case, shall appear to them to be proper; and shall determine in such order how and to whom the payments shall from time to time be made, which order shall, if the payments required by him to be made be in arrear, be enforced in the manner prescribed by the act of the 11 & 12 V. c. 43, for the enforcing of orders of justices requiring the payment of a sum of money; provided that such order may be at any future time revoked by the justices in petty sessions assembled, if they see sufficient cause for so doing.

In *Williams* v. *Fowler*, the plaintiff, the attorney of the wife, obtained his costs in a suit instituted against the husband on account of the wife, 1 *M'Lel. & Yo.* 269. When there is a separation by consent, and the wife has a separate allowance, those who trust her, *knowing* of such separation and maintenance, do it upon her own credit. But a prohibition in general, by putting her in the newspaper, is no legal notice not to trust her; the knowledge of the separation and maintenance must be *brought home* to the tradesmen with whom the wife deals.

Where credit has been given to the wife of a man who has abjured the realm, or is transported, she alone is liable, *T. R.* 8, 9. But by no agreement between a man and his wife for separation and maintenance can she be made legally responsible for the contracts she may enter into, or be liable to the actions of those who may have trusted to her engagements as if she were a single woman, *Marshall* v. *Rutton*, *T. R.* 545.

It appears a wife is justified in leaving her husband, where she has *reasonable* ground to apprehend personal violence, without waiting until *actually committed*; and in this case the husband is liable for necessaries furnished during her separation, *Houliston* v. *Smith*, 3 *Bing.* 127.

If a man cohabit with a woman and permit her to assume his name, and appear to the world as his wife, and, in that character, to contract debts for necessaries, he becomes liable, though the creditor is acquainted with her real situation, and though the man is married to another woman; but this rule only holds during cohabitation, 2 *Esp.* 637; 4 *Camp.* 215.

If a man marry a wife with CHILDREN, he is not bound to maintain them by the act of marriage; but if he hold them out as part of his family, he will be considered to stand in place of the

parents, and liable even for a contract made by his wife, during his residence abroad, for their maintenance and education, 4 *East*. 8. But from the passing of the Poor Law Act, if a man marry a woman with children, *legitimate* or *illegitimate*, he is bound to maintain them till they attain the age of sixteen, or till the death of the mother, 4 & 5 W. 4, c. 76, s. 50.

A husband cannot be charged for *money lent* to his wife, even for the purpose of buying necessaries, because it may be misapplied, 1 *Salk*. 387. But if the money be laid out in necessaries, equity will consider the lending as standing in the place of the person providing the necessaries, and decree relief.

The legal relations of husband and wife were elucidated in the court of Criminal Appeal, June 3, 1854. A woman had fled with a paramour from her husband's house, taking with her some money; a larger portion of this was subsequently found in the man's possession when he was arrested; he was tried for stealing the property, and convicted. The conviction was appealed against on the ground that a wife cannot rob her husband, and consequently that the convict in this case could not have received stolen property. The court were of opinion that the conviction was right. The general rule was, that the wife for stealing the goods of the husband could not be found guilty of larceny if the wife took and applied to her own use the goods of the husband, for the husband and wife were one: but the law had qualified this—if the wife committed adultery, and then stole the goods with the said adulterer, then she had determined her quality of wife, and was no longer recognized as having any property in the goods of her husband; and then the person who aided her in stealing the property was guilty of felony.

By the custom of London, if a wife trade by herself, in a trade with which her husband does not meddle, she may sue and be sued on her own account; but this does not extend to any suit in the superior courts in Westminster.

III.—SOLEMNIZATION OF MARRIAGES IN ENGLAND.

The Marriage Act, the 6 & 7 W. 4, c. 85, amended by subsequent statutes, has multiplied the modes by which marriages may be contracted. With the exception of marriages according to Quaker or Jewish usage, where *both parties* must be of the Society of Friends, or both professors of Judaism, parties marrying may adopt any of the prescribed forms of marriage they think fit, no declaration of faith, or observance of established ritual, being requisite. Marriages may be simply a civil contract or a religious ceremony, or both; and there are now four distinct modes by which they may be legally solemnized. 1. In the accustomed way, by license from the archbishop or a surrogate, according to the rites of the Church of England. 2. By banns, according to the

rites of the Church of England. 3. By certificate, without banns, according to the rites of the Church of England. Lastly, marriage may be contracted in any registered place of religious worship, or in the office of a superintendent-registrar.

The acts required to be done by persons who may be desirous of solemnising marriage under the statute are the following:—

1. Persons desirous of being married according to the rites and ceremonies of the Church of England, may be so married, after publication of banns, or by license, or by special license, as heretofore: or they may be married (without publication of banns, or by license, or by special license) according to the rites and ceremonies of the Church of England, on production of a certificate from the superintendent-registrar of the district, to be obtained in the following manner, namely:—

One of the parties intending marriage must give notice in writing to the superintendent-registrar of the district within which the parties shall have dwelt for not less than seven days then next preceding; or, if they dwell in different districts, they must give the like notice to the superintendent-registrar of each district. The notice must be in the form of a schedule, which the superintendent-registrar will furnish on being applied to, and must be filled up with particulars specified as to names, age, and occupation; whether they have resided within the district more than one calendar month, or, if not, how long; in what church or building the marriage is to be solemnised; the district and county in which the other party resides, when they dwell in different districts.

Every notice given must, by 19 & 20 V. c. 119, s. 2, be accompanied by a solemn declaration in writing, that there is no impediment of kindred or alliance, or other lawful hindrance to such marriage; and when either party is neither widow nor widower, and under twenty-one years of age, declaration must be made that the consent of the party whose consent is required by law has been given to the marriage. Making wilfully false declarations subjects to the penalties of perjury. A form of notice is given in the act. After the expiration of twenty-one days from the entry of the notice in the Marriage Notice Book, if no impediment has been shown, the superintendent-registrar may be required to issue a certificate.

2. Persons (except Quakers and Jews) desirous of solemnizing marriage not according to the rites and ceremonies of the Church of England, may be married according to other rites and ceremonies, on production of a certificate obtained as mentioned, in a registered place of worship, provided that every such marriage shall be solemnised with open doors, between the hours of eight and twelve o'clock in the forenoon, in the presence of some registrar of the district in which such registered building is situate, and of two or more credible witnesses: provided also, that in some part of the

ceremony, and in the presence of such registrar and witnesses, each of the parties shall declare,—"I do solemnly declare that I know not of any lawful impediment why I, A. B., may not be joined in matrimony to C. D." And each of the parties shall say to the other :—

"I call upon these persons present to witness that I, A. B., do take thee, C. D., to be my lawful wedded [wife or husband]." Provided also that there be no lawful impediment to the marriage of such parties.

MARRIAGE BY LICENSE.—Persons may be married after seven days from the entrance of the notice by license. A license may be granted by the superintendent-registrar; but only for marriage in a registered building within his district or in his office: but before any license can be granted by him, one of the parties intending marriage must appear personally before him, and, in case he shall not be the superintendent-registrar to whom notice of such intended marriage was given, shall deliver to him the certificate of the superintendent-registrar or superintendent-registrars to whom such notice shall have been given; and such party shall make oath, or shall make his or her solemn affirmation or declaration instead of taking an oath, that he or she believeth that there is not any impediment of kindred or alliance or other lawful hindrance to the said marriage, and that one of the said parties hath for the space of fifteen days immediately before the day of the grant of such license had his or her usual place of abode within the district within which such marriage is to be solemnized; and, where either of the parties (not being a widower or widow) shall be under the age of twenty-one years, that the consent of the person or persons whose consent to such marriage is required by law has been obtained thereto, or that there is no person having authority to give such consent, as the case may be.

3. Persons objecting to be married either according to the rites and ceremonies of the Church of England, or in any such registered building, may, after notice and certificate as aforesaid, solemnize marriage at the office of the superintendent-registrar with open doors, between the hours of eight and twelve in the forenoon, in the presence of the superintendent-registrar and some registrar of the district, and in presence of two witnesses, making the declaration, and using the form of words, required in the case of marriage in a registered building.

Quakers may contract and solemnize marriage according to the usages of their society, provided notice have been given to the superintendent-registrar, and a certificate shall have been issued, as before mentioned. By 23 V. c. 18, marriages may be solemnized by the Society of Friends where *one* only or neither of the parties to the marriage is member to the society; provided that the party who shall not be of the society shall profess with or be of the same persuasion; provided also, that no person who is not a member of

the society shall be married according to its usages unless authorised under some general rule of the society; and a copy of such rule, signed by the recording clerk of the society in London and in Dublin respectively, shall be admitted as evidence of such rule in all proceedings touching the validity of the marriage.

Jews may likewise contract and solemnise marriage according the usages of the Jewish religion, under similar provisions.

By 10 & 11 V. c. 58, the marriages of Quakers and Jews solemnised in England before the 1st of July, 1837, or in Ireland before the 1st of April, 1845, are declared good in law to all intents and purposes.

Every marriage of which notice has been entered as described must be solemnised within three calendar months after such entry, or the notice must be renewed.

Every marriage solemnised after the 1st of March, 1837, under the provisions of the act in any other manner than as directed, will be null and void.

If any valid marriage shall be had under the provision of the act by means of any wilfully false notice, certificate, or declaration, made by either party to such marriage, as to any matter to which notice, certificate, or declaration is required, her Majesty's attorney-general or solicitor-general may sue for the forfeiture of *all estate and interest in any property accruing to the offending party by such marriage;* and the proceeds and the consequences will be the same as are provided in the like case with regard to marriages by license before the passing of the act.

To prevent marriages from being solemnized at a distance from the residence of the parties, the 3 & 4 V. c. 72, enacts that no superintendent-registrar shall grant a certificate of notice of marriage where the building in which the marriage is to be performed is not in the district wherein one of the parties has dwelt for the requisite period, except in favour of particular religious sects.

In *Beamish* v *Beamish*, a clergyman having solemnized his own marriage, the House of Lords (February 21, 1861) decided that the marriage was unlawful, and the child of the marriage illegitimate.

Amendments of the Marriage and Registration Acts.—By 19 & 20 V. c. 119, the notice of marriage without license must be suspended in the superintendent-registrar's office during the twenty-one days; but notice of marriage by license need not be so suspended. In case of marriage by license, notice to the superintendent-registrar of one district will be sufficient. Notice of marriage without license may be given in Ireland if one of the parties reside there. In Scotland, certificate of proclamation of banns as to party resident there, equivalent to certificate of superintendent-registrar. The consent of the minister required to the solemnizing of a marriage in any registered building, 19 V. c. 110, s. 11. Par-

ties to a marriage contracted at the registry office of any district may add the religious ceremony ordained by the church or persuasion to which they belong, s. 12. The superintendent-registrar, to whom notice has been given, may grant license for marriage in a district in which neither of the parties reside, s. 13. Marriages of Quakers or Jews may be solemnised by license.

The bishop, by 20 V. c. 19, may order banns to be published in *extra-parochial* places. This power is extended by 23 V. c. 24, so that authority may be given for the publication of banns, and the solemnization of marriage by banns or license between parties, whether both or either of them reside in an extra-parochial place; "provided, when the parties to any marriage reside within different districts, the banns for such marriage shall be published in the church or chapel, authorised under the provisions of the said 20 V. c. 19, in which the marriage is intended to be celebrated, as well as in the chapel of the other district, licensed under the provisions of the statutes, where one of the parties then is resident; and if there be no such chapel, then in the church or chapel in which the banns of such last-mentioned party might be legally published if no such statute had been passed."

IV.—LEGITIMACY AND VALIDITY OF MARRIAGES.

An act of 1858, the 21 & 22 V. c. 93, enables persons to establish their legitimacy, and the marriage of their parents, and also their right to be deemed natural-born subjects. By s. 1, any natural-born subject, or any person whose right to be deemed a natural-born subject depends wholly or in part upon his legitimacy, or on the validity of a marriage, being domiciled in England or Ireland, or claiming any real or personal estate situate in England, may apply by petition to the court of Divorce for a decree declaring that the petitioner is the legitimate child of his parents, and that the marriage of his father and mother, or of his grandfather and grandmother, was a valid marriage, or for a decree declaring either of the matters aforesaid. Such petitioner so domiciled or claiming may also apply to the court for a decree declaring that his marriage is valid, the court having jurisdiction to determine such application. By s. 2, any person so domiciled or claiming may apply by petition for a decree declaratory of his right to be deemed a natural-born subject, and the court have jurisdiction to determine such application. Both applications may be included in the same petition, the petition being accompanied by an affidavit verifying the same, and the absence of collusion. The attorney-general is to have a copy of petition one month before it is filed, and to be respondent, s. 6. By s. 9, any person domiciled in Scotland, or claiming heritable or moveable property there, may insist on a

declarator before the court of Session, that he is a natural-born subject.

V.—DEGREES OF AFFINITY AND BLOOD.

The prohibited degrees of marriage under the 25 H. 8, c. 22, and which make the children of such marriages *illegitimate*, are the following: namely, a man may not marry his mother or stepmother; his sister; his son's or daughter's daughter; his father's daughter by his stepmother; his aunt; his uncle's wife; his son's wife; his brother's wife; his wife's daughter; his wife's son's daughter; his wife's daughter's daughter; his wife's sister.

It is a vulgar error that *first* cousins may intermarry, and that *second* cousins may not; for they may both marry with each other. A contrary opinion has been derived from the prohibitions of the canon law, which have long ceased to be in force in respect to this subject.

Marriages within the prohibited degrees are not merely voidable by sentence of an ecclesiastical court, but by 5 W. 4, c 54, are absolutely null and void if solemnized after the passing of the act (*August* 31, 1835).

The law of 1835, which made void *future* marriages within the prohibited degrees of affinity and consanguinity, legalized former marriages within the degrees of affinity, but not those of blood relations. The relation between a man and his wife's relations is a relationship of affinity.

VI.—MARRIAGES IN SCOTLAND.

By a recent act, the law of marriage in Scotland was amended, and a determinate period of residence made essential to the validity of the contract in that part of the United Kingdom. By 19 & 20 V. c. 96, after December 1, 1856, "no irregular marriage contracted in Scotland by declaration, acknowledgment, or ceremony, shall be valid, unless one of the parties had at the date thereof his or her usual place of residence there, or had lived in Scotland for twenty-one days next preceding such marriage; any law, custom, or usage to the contrary notwithstanding."

By s. 2, persons who, after the above date, have contracted an irregular marriage may, within three months, obtain a certificated copy of entry, by sheriff depute, that the parties were married, and that one of them lived twenty-one days preceding the marriage in Scotland; such certificate to be conclusive of the validity of the marriage.

Residence is by this act made an indispensable condition to the validity of a marriage in Scotland; and by consequence a marriage cannot be summarily or clandestinely solemnized at Gretna Green or elsewhere in that kingdom, any more than in England.

The 24 & 25 V. c. 86, is an adaption of the English matrimonial act, the 21 V. c. 85, to the Scottish law and law courts, except s. 16, which provides that "when a married woman succeeds to property, or acquires right to it by donation, bequest, or any other means than the exercise of her own industry, the husband or his creditors, or any other person claiming under him or through him, shall not be entitled to claim the same as falling within the *communio bonorum*, or under the *jus mariti*, or husband's right of administration, except on the condition of making a reasonable provision for the support of the wife, if a claim be made on her behalf." Dispute as to the amount of maintenance to be settled by the court of session. But no claim voted after such property has come fully into the husband's possession, nor if a creditor before such claims made shall have attached the property by a decree of adjudicature or arrest.

VII.—MARRIAGES ABROAD.

Marriages of British subjects in foreign countries are valid, if made according to the laws of those countries, *Herbert* v. *Herbert*. And the *validity* of all marriages solemnised by a minister of the Established Church, in the chapel or house of a British ambassador or minister, or in the chapel of any British factory, or in the house of a British subject abroad, as also of marriages solemnised within the lines of a British army serving abroad, is fully secured by the 4 G. 4, c. 91. But a marriage which is illegal in England would not be held legal there, if celebrated abroad by British subjects. A Mr. Brook married at Altona his first wife's sister, and the question was raised in December, 1857, whether that marriage, legal in Denmark, was legal in England. Mr. Justice Creswell decided that as the parties were British subjects, they were bound by the laws of England; and as the law forbids the marriage with a deceased wife's sister, the law of a foreign country cannot prevail.

Under 12 & 13 V. c. 68, greater facilities are afforded than those previously existing to British subjects residing in foreign countries, where there is resident a duly authorized British consul. For the validity of marriage under the act, notice must be given by the parties intending to marry, in a prescribed form, to the consul, one calendar month next preceding, stating their names, professions, or condition, their residences, and that each party has dwelt within the consular district one calendar month at the least. Consul to file notices, register them in a book, and suspend copies in the office of the consulate. Persons duly authorised may forbid the solemnization of a marriage. Consul may grant license to marry, but like consent to any marriage by license is required as in England. Caveat against marriage to be lodged with the consul on payment of a fee of 20s. If a marriage be not solemnised

within three calendar months, a fresh notice is requisite. After seven days by license, or twenty-one days without license, marriages may be solemnized at the consulate, by or in the presence of a consul and two witnesses. The marriage fee, if by license, 20*s.*; otherwise, 10*s.* In case of fraudulent marriage, the guilty party to forfeit all property accruing from the marriage, as mentioned under the Marriage Act, 6 & 7 W. 4, c. 85, p. 225.

The law of foreign marriages with our neighbours is similar to that of England, and the consent of parent and publication of banns are indispensable to their validity. A couple recently (January, 1866), who were unable to compass the conditions of their nuptials in Paris, repaired to London, where they were privately married. On their return the marriage was pronounced null and void by the Civil Tribunal of the Seine, as being clandestine, and not having the consent of the father of the bride.

VIII.—REGISTRY OF BIRTHS, DEATHS, AND MARRIAGES.

The 6 & 7 W. 4, c. 86, amended by 21 & 22 V. c. 25, and by 31 & 32 V. c. 122, repeals former statutes, and provides for the establishment of a general register-office in London or Westminster, and the appointment under the great seal of a registrar-general of births, deaths, and marriages in England. His salary, not to exceed £1,000 (now £1,200), and those of the subordinate officers, and a specified portion of the expenses of registry, to be paid out of the consolidated fund. Secretary of state, or the registrar-general with his approbation, to make regulations for the management of the office and duties of the officers. Registrar-general is annually to prepare a general abstract of the number of births, deaths, and marriages registered, to be laid before Parliament. The board of guardians of every union, parish, or place under the Poor Law Amendment Act, are within given times to divide their union or parish into districts, and to appoint to each district a person, with such qualifications as the registrar-general may from time to time declare necessary, to be a registrar of births and deaths: each district to have a distinct name. The clerk to the guardians, if he think fit, and have the qualifications necessary, may become the office of superintendent-registrar: otherwise, the guardians may appoint to the office. Every registrar and superintendent is to hold office during the pleasure of the registrar-general. Any officer of a union or parish, holding office under this act, to cease to do so on removal from his former office. Guardians to provide out of the poor rates a register office, to be under the control of the superintendent. Registrar-general to furnish to the superintendent, for the registrars under him, strong iron boxes, with locks and two keys, for the safe *custody of register*-books and returns, which on *removal from office are to be given* up to his

successor, under pain of imprisonment by summary process before justices. Registrar and deputy must dwell within their district, with their names and additions on their houses.

On the part of the community, the acts required to be done under the statute are the following:—

The father or mother, or the occupier of any house or tenement in which a child is born, must give notice of such birth to the registrar of the district in which it happens, within forty-two days next after the day of birth; and the father or mother or (in case of their death, illness, absence, or inability) the occupier must, within forty-two days, give information to the registrar, on being requested to do so, of the following particulars, namely:—the day of the birth of the child; the name (if any is given); the sex; the name and surname of the father; the name and maiden surname of the mother; the rank, profession, trade, or calling of the father; the person giving such information must also state and put in the register his or her name, description, and residence; and unless this be done, *no register can be given in evidence*. No fee or payment can be lawfully required of the person so giving information respecting any birth; and the entry in the register, which the registrar will be obliged to make, being signed as aforesaid, will be evidence of such birth in any court of law or equity.

No birth may be registered after forty-two days from the time of such birth, unless the father or guardian of the child, or some person present at the birth, make a solemn declaration of the foregoing particulars, and the registrar shall register the birth accordingly, in the presence of the superintendent-registrar; and the person requiring the birth to be so registered pay to the superintendent-registrar 2*s*. 6*d*., and to the registrar (unless the delay shall have been occasioned by his default) 5*s*.

No person shall knowingly cause any birth to be registered otherwise than as mentioned, after forty-two days, under a penalty of £50; and no person shall knowingly cause any birth to be registered at all after six calendar months from the day of birth (except in the case of children born at sea), under the like penalty.

No register of births made after six calendar months from the day of birth (except in the case of children born at sea) will be received as legal evidence in any court of law or equity.

In all cases of DEATH the following is requisite:—

Some person present at a death, or in attendance during the last illness, or (in case of the inability of such person) the occupier, or (if the occupier be the person who has died) some inmate of the house or tenement in which a death shall have happened, must, within five days after the death, give notice to the registrar of the district, and must within eight days give information to the said registrar, on being requested to do so, according to the best of his or her knowledge or belief, of the following particulars, namely:—

the day of death; the name and surname of the person who has died; the sex; the age; the rank, profession, trade, or calling; the cause of death: the person giving information must also state and sign in the register his or her name, description, and residence; and unless this be done, no register can be given in evidence. No fee or payment can be lawfully required of the person so giving information respecting any death; and the entry in the register, which the registrar will thereupon be obliged to make, being signed as aforesaid, will be evidence of such death in any court of law or equity.

Every person who shall bury, or perform any funeral or any religious service for the burial of any dead body, for which no certificate shall have been made and delivered either by the registrar or (in cases of inquests) by the coroner, and who shall not within seven days give notice thereof to the registrar, will forfeit £10. And no certificate can be given (except by the coroner when an inquest has been held) unless the death has been registered by the registrar of the district. It is, therefore, of the greatest importance that persons directed as above shall, without delay, give information respecting a death to the registrar of the district within which the death has taken place, that he may register the same, and thereupon deliver a certificate to the undertaker, or other person having charge of the funeral.

CAUTIONS.—Every person wilfully making or causing to be made any false statement touching any of the particulars required to be known and registered, for the purpose of such statement being inserted in any register of birth, death, or marriage, will be subject to the same pains and penalties as if guilty of perjury.

Persons failing to do that which is by an act of parliament enjoined, are indictable for a *misdemeanor*, although no specific penalty is imposed by the act which they have so disobeyed.

CHAPTER XIII.

Parent and Child.

CHILDREN are either legitimate or bastards, and, according as they fall under the one or the other description, are subject to different legal qualifications.

A *legitimate* child is one born in lawful wedlock, or within a competent time after a lawful marriage.

Independent of the obligations imposed by nature, parents are compelled by law to provide a maintenance for their offspring. By the 43 Eliz. c. 2, the father and mother, the grandfather and

grandmother, of poor children, unable to work, either through infancy, disease, or accident, are bound to provide them with necessaries, at the rate of 20*s.* a month, or £13 a year.

The father alone has legal power over his children, and this power he may exercise till they attain 21 years of age. He is entitled to the custody and care of his children, and may retake them if taken from his custody; and the courts will grant a *habeas corpus* to restore them, as well as entertain actions of trespass brought by him against parties taking them away. He has the right to direct the education of his children, and, being under age, may correct them in a reasonable manner, and delegate the authority to a schoolmaster or tutor, who must exercise his delegated power, not in an angry, but considerate and temperate manner. By an act of 1873, 36 V. c. 12, which repeals 2 & 3 V. c. 54, the court of Chancery may, upon hearing the petition by her next friend of the mother of any infant, order that she shall have access to such infant at such times and subject to such regulations as it may deem proper, or the court may order the infant to be delivered to the mother, and to remain in her custody, or if already in her custody, to remain therein until the infant attain such age, not exceeding sixteen, as the court may direct.

No agreement contained in any separation deed made between the mother and father of an infant is to be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control thereof to the mother. Provided always that no court shall enforce any such agreement if the court shall be of opinion that it will not be for the benefit of the infant to give effect thereto.

Before the passing of 36 V. c. 12, courts of equity have frequently exercised a power of restraint upon parents in matters tending to the detriment of children who have *property* within their jurisdiction.

By 31 & 32 V. c. 122, s. 37, when any parent shall wilfully neglect to provide adequate food, clothing, medical aid, or lodging, for his child, being in his custody, under the age of 14 years, whereby the health of such child shall have been or shall be likely to be seriously injured, he shall be guilty of an offence punishable on summary conviction, and being convicted thereof before any two justices, shall be liable to be imprisoned for any period not exceeding six months, with or without hard labour, as such justices shall decide. Provided that such justices may suspend the sentence until further notice, if the offender enter into his own recognizances, with or without one or more sureties as the justices may think fit, to come up for judgment when called upon; and the guardians of the union or parish in which such child may be living shall institute the prosecution and pay the costs thereof out of their funds.

II.—BASTARDS.

Bastards by our law are such children as are not born either in lawful wedlock or within a competent time after its determination. (2 Blackstone, Commentaries, 274.)

But, in the *first* place, if the child be begotten while the parents are single, and they marry a few months after, the child is not a bastard, though begotten out of wedlock; for the child is legitimated by the recognition of the husband, 8 *East*. 93. And, in the *second*, though the usual course of gestation is nine calendar months, the law is not particular; and if the child be born within some days of that time, it is counted legitimate. Dr. Hunter gives the following information:—1. "The usual period of gestation is nine calendar months, but there is very commonly a difference of one, two, or three weeks. 2. A child may be born alive at any time from three months; but we see none born with powers of coming to maturity, or of being reared, before seven calendar months, or near that time—at six months it cannot be. 3. I have known a woman bear a child in a perfectly natural way fourteen days later than nine calendar months; and believe two women to have been each delivered of a child, alive, in a natural way, ten calendar months from the time of conception." A child has been held *legitimate* born forty weeks and ten days after the death of the husband.

The legitimacy or illegitimacy of the child of a married woman, living in a notorious state of adultery, is a question for a jury to determine. But, in general, during coverture, the children are accounted legitimate, unless the absence of the husband beyond the seas, or some other circumstance, renders it physically impossible that the husband should have had such intercourse with his wife as to be the father of the child. In the *Say and Sele Peerage*, 1 *Cl. & Fin.* 507, where children were born whilst the wife was living in adultery, and the husband residing in another part of the kingdom, rendering access impossible, it was held that the illegitimacy was established. On the other hand, *access* of the husband is not conclusive of legitimacy; and in the Banbury case, though access was notorious, yet the House of Lords decided that the *concealment of the birth* of a child from the husband's knowledge was sufficient to prove an adulterous issue.

If the wife have children after separation by divorce, they are bastards; but in a voluntary separation, by agreement, the law supposes access, unless the negative be established.

The father of an infant *legitimate* child is entitled, as stated in the last section, to the custody of it, but the mother of an *illegitimate* child is preferred to the putative father; and if the putative father of a bastard obtain possession of it by fraud,

the court will order it to be restored on the application of th mother, *Rex* v. *Sope*, 5 *T. R.* 278.

If a person know that his natural child is boarded and clothe by another, and neither expresses dissent nor takes the chil away, he is liable for such board and clothing without any promis so to do, *Nicholl* v. *Allen*, 3 *C. & P.* 36.

A bastard has no rights but what he can acquire; being, in th eye of the law, the son of nobody, he cannot be heir to any one nor have heirs but of his own body. He has, legally, no name except that he gains by reputation. But he may be made legiti mate by act of parliament.

Child. in an act of parliament, means a legitimate child only not a bastard, unless otherwise mentioned in the act, *Court o Exchequer, Nov.* 6, 1863.

CHAPTER XIV.

Guardians and Infants.

A GUARDIAN is a temporary parent of a child for so long a ti as the ward is an infant, or under age.

If an estate be left to an infant, the father is by comm law the guardian, and must account to his child for the profits.

A father may, by deed or will, appoint a guardian of his ch either born or unborn, till such child attain the age of years. These are called guardians by statute, or testamen guardians.

As to persons considered within age, the period is diff between males and females. A male 12 years old may tak oath of allegiance; at 14, is at years of discretion, and consent or not to marriage; and at 21 is at his own disposa may alienate his lands, goods, and chattels. A female at 7 of age may be betrothed or given in marriage; at 9, is entit dower; at 12, is at years of maturity, and may consent to marriage; and at 21 may dispose of herself and lands.

So that full age, in male or female, is 21 years, whi is completed on the day preceding the twenty-first anni of a person's birth.

The power and reciprocal duties of guardian and ward same, during the infancy of the ward, as that of a par child; with this difference, that the guardian, when t comes of age, is bound to give him an account of all tra on his behalf, and must answer for all losses by his wilfu and negligence.

Marrying a ward of the court of Chancery, wi

ment of the court, is a contempt for which the party may committed or indicted, though he was ignorant of the ward-ip. To clear such contempt, a proper settlement must be made the ward; and even that does not necessarily purge the ntempt, 8 *Ves.* 74.

II.--LIABILITIES OF INFANTS.

In law, a person is styled an infant till he attains 21 years, hich is termed *full age;* and, until that period, his actions are ound under peculiar criminal and civil jurisprudence.

Under the age of 7 years, he cannot be capitally punished for y criminal offence; but at 14 he may.

The period between the age of 7 and 14 is subject to great un-rtainty; for, generally, the responsibility depends on the capa-ity to discern the good and evil tendency of actions.

Sir Matthew Hale gives two instances of capital convictions nder the age of 14; one, of a girl of 13, who was burned for illing her mistress; another, of a boy still younger, that had illed his companion, and hid himself, who was hanged: for it ppeared, by his hiding, that he knew he had done wrong: and in uch case, the maxim of the law is—*malice is equivalent to age.*

In civil matters, the law is so indulgent to infants as to allow em to contract for their *benefit*, but not otherwise. Thus, an fant may bind himself apprentice, because it is for his advantage. us, he may be bound, after he attains 21, to pay for meat, othes, physic, and other *necessaries*, furnished during his infancy; likewise, for good teaching and instruction. This binding ust be by *parol:* for, as an infant is not bound by any bond, note, r other which he may give, even for necessaries, the law will imply promise by the infant to pay for the necessaries furnished for his maintenance, where no promise has been made. With respect schooling, the infant is bound only where the credit has been ven given to him. In all cases, however, where the infant is under the power of his parents, and is living in the same house with them, he will not then be liable even for necessaries.

In order to recover, it must appear that the things were actually ecessary, and of reasonable price, and suitable to the infant's ondition, rank, fortune, and estate, which points must be left to ury to determine.

An infant is not chargeable on a contract for goods supplied to him on trade; neither is he liable for *money* which he borrows, though out for necessaries, though he actually does not lay it out in necessaries.

But if a person after attaining his full age and before any action ought, expressly and voluntarily promises *to pay a demand* upon which, though not for necessaries, *he will thereby be rendered* liable;

therefore, an express promise made, after the infant's attaining maturity, to pay a bill of exchange accepted by him during his infancy, is binding on him, 4 *Esp.* 187. But by the 9 G. 4, c. 14, it is necessary, in order to sustain an action, that all such confirmatory promises be *in writing*, signed by the party to be charged therewith.

If an infant be partner with another, and hold himself out as such, and do not, on reaching maturity, give notice of a dissolution, he is bound by the subsequent contracts of the firm, *Goode* v. *Harrison*, *B.* & *A.* 147.

Before the passing of 1 W. 4, c. 65, a court of equity could not grant leases of an infant's estate beyond his infancy; in consequence of which, necessary improvements were not made, and the property became deteriorated in value. The court of Chancery may now exercise this power, whenever it appears for the infant's benefit; but, in order to guard against abuse, no fine or premium is to be taken, and the best rent is to be reserved. The law remains unaltered as regards the mansion-house, park and grounds occupied therewith; no lease of which can extend beyond the minority of the infant.

For facilitating the payment of debts out of real estate, a court of equity may direct mortgages or the sale of estates by infants to purchasers, for the benefit of creditors, 2 & 3 V. c. 60.

CHAPTER XV.

Professional Classes.

I.—LAWYERS.

LAWYERS, or counsellors, for the terms are nearly synonymous, are of two sorts or degrees, *barristers* and *serjeants*. The former are admitted to plead at the bar, and take upon them the advising and defence of clients, after a certain period of attendance in the inns of court. A *serjeant* is a more ancient description of the learned profession, created by the queen's writ, and who, from being more intimately acquainted with the practice of the common law, enjoyed, till the court was thrown open to all barristers of the superior courts by the act of 1846, the exclusive privilege of pleading in the court of Common Pleas. It is from the class of serjeants-at-law, or *serviens ad legem*, as they are termed in legal documents, that the fifteen judges were taken until the Judicature Act, 1873, did away with this custom.

From both these degrees the queen's counsel are selected; the two principal of whom are the attorney and solicitor-general. They

are not allowed to be employed in criminal prosecutions against the crown without a license, which is never refused.

It is usual to grant patents of *precedence* to such barristers as the queen thinks proper to honour with that distinction; by which they are entitled to such rank and *pre-audience* as is assigned in their respective patents. These, as well as the attorney and solicitor general of the queen consort, rank promiscuously with the crown's counsel, and, together with them, sit within the bar of the court, but receive no salaries, and are not sworn, and therefore are free to be retained in causes against the crown.

Pre-audience, or the right of serjeants and barristers to be first heard by the court, is a point of so much importance at the bar, that it may be proper to state the order of precedence as settled by royal mandate:—

1. Queen's Advocate-General.
2. Queen's Attorney-General.
3. Lord Advocate of Scotland.
4. Queen's Solicitor-General.
5. Queen's Premier Serjeant.
6. Queen's Ancient Serjeant, or the oldest of the Queen's Serjeants.
7. Queen's Serjeants.
8. Queen's Counsel, and Counsel having patent of precedence before April 24, 1834.
9. Serjeants-at-law.
10. Recorder of London.
11. Common Serjeant of London.
12. Advocates of the Civil Law.
13. Barristers at large, according to the dates of their call to the bar.

In the court of Exchequer two of the most experienced barristers, called the *postman* and *tubman* (from the places where they sit), have precedence in motions.

The general rules of qualification to entitle a person to be called to the bar in all the inns of court are,—that he must be 21 years of age, have passed an examination in Roman and civil law, the law of real and personal property, and common law and equity, and have been for five years at least a member of the society: if he be a master or a bachelor of arts of either of the English Universities, or of the Dublin University, it is sufficient if he has kept twelve terms, and has been *three* years a member of the inn by which he desires to be called to the bar.

In forensic pleading, a barrister has privilege to enforce anything communicated to him in his professional capacity, if pertinent to the matter in issue, and is not bound to examine whether it be true or false. But to bring an observation within the rule of being spoken in judicial course, it must be strictly relevant to the matter in issue; and the client's ignorance of what is, or is not, so relevant, will often protect *him* before the court, where the advocate, from the presumption of superior legal knowledge, would not stand excused.

A counsellor can maintain no actions for his *fees*, which are given, not as a salary or hire, but as a gratuity, which a barrister cannot

demand without injury to his reputation. On the other hand, a client cannot maintain an action to recover back a fee to counsel for negligence, want of zeal, or skill in the conduct of his cause; nor even if he fail to attend to argue a cause for which he has received a fee, *Peake's R.* 122. But if counsel accept a fee, and become counsel, and discover his instructions to the opposite side, an action lies. And a counsel signing a bill in Chancery, containing scandalous or impertinent matter, is, on complaint, liable to pay costs.

Both barristers and attorneys are entitled to attend, at sessions, to take upon them the causes of others, and to prosecute for the crown.

At sessions where a sufficient number of barristers attend, it is usual to give them sole audience, and the attorneys are, in consequence, not heard in person. At sessions where the bar do not attend, as in many boroughs and cities, it is usual to hear the attorneys, as advocates; and though it may be doubted whether in strictness they are entitled to prosecute indictments, it is customary, and certainly convenient, to allow them that privilege. In cases where the bar has not been accustomed to attend, but two or more barristers wish to do so, it is usual for them to intimate their desire to the chairman, and to request that they may have pre-audience; and, if this request be granted, the attorneys cannot afterwards be heard in their presence, unless they should be all retained on one side, *Merrifield's Law of Attorneys.*

At a meeting of the northern circuit in 1851, a resolution affecting the etiquette of the bar, with reference to the county courts, was carried by a large majority. It had, since the institution of these courts, been considered doubtful whether a barrister could, consistently with the etiquette of the profession, accept a brief in any of these courts without a special fee, that is, a fee not less than two guineas. This question was brought under consideration, and at a very full court it was decided that it was not contrary to etiquette for a barrister to hold a brief in a county court without a *special fee;* but that any barrister might accept and hold a brief in any of these courts with a fee of one guinea only, if he thought fit to do so. It was not denied that the etiquette of the profession had been otherwise up to that time, but it was declared that the county courts were likely to introduce so great a change in a considerable part of the practice of the profession, and that they formed a case so very different from that of the courts in which the ancient practice had been observed, that it had become necessary to abandon the old rule, so far as the county courts were concerned. It was also decided that it was quite in accordance with the etiquette of the profession for barristers to attend and sit in the county courts, and to form a bar there if they thought fit to do so.

It appears neither counsel nor attorneys have a legal right to be

present in any preliminary proceeding before a grand jury, 3 *B.* & *A.* 432; but by 6 & 7 W. 4, c. 114, counsel may defend prisoners (or attorneys, in courts where they practise) in cases of felony, as well as in treason and misdemeanor, and in summary convictions they may defend and examine and cross-examine witnesses.

Serjeants and barristers rank as esquires, and in any action against them they are entitled to have the venue laid in Middlesex. But as barristers were found not to be exempt from the late London Court of Requests (10 *Bing.* 335), they may be amenable to the city county court.

II. ATTORNEYS AND SOLICITORS.

Attorneys and solicitors are persons duly admitted into the queen's courts, where they act as the agents and representatives of their clients. They are considered public officers belonging to the courts in which they are admitted, and, as they enjoy certain privileges on account of their admission, so they are peculiarly subject to the control of the judges, who exercise summary jurisdiction over them, not merely in cases where they have been employed in the conduct of suits, or any matter purely professional, but wherever the employment is so connected with their professional character as to afford a presumption that it formed the ground of their employment. Thus, one attorney has been compelled to return part of an apprentice premium, 3 *B.* & *A.* 257; one to give up papers and deeds, which had been placed in his hands as steward for the owner of the estate to which they refer, 3 *T. R.* 275; and another to pay over money which he had received, when employed to collect the effects of an intestate by the administrator, although he had never been employed by him to prosecute or defend any suit or equity, 4 *B.* & *A.* 47.

The court of Chancery exercises the like power over its solicitors and clerks in court.

The taxed costs, termed costs between party and party, differ from the costs between *attorney and client;* the last including the *extra charges* to which the attorney has been liable pending the suit, and charged to his employer.

An attorney, it seems, after the commencement of a suit, may insist on being supplied with the necessary funds for carrying the same to a conclusion, or abandon the suit on reasonable notice; but such demand of money on account is not deemed liberal, unless the client's circumstances are doubtful, or the proceedings very expensive.

By 6 & 7 V. c. 73, thirty-two acts respecting solicitors and attorneys are wholly or partly repealed, but fifty-eight others relating to them are wholly or partly retained. Under this act power is given, for the first time, to tax bills for *conveyancing*

business; and permission may be given to attorneys to bring actions before the expiration of a month after their delivery of their bills of costs. There are seven provisions in the act relating to bills of costs. It is enacted that attorneys and solicitors shall not commence an action until one month after the delivery of a bill of costs. Reference of bills to the proper officers may be made within a month, whether they relate to business transacted in the court or not. Taxation may be ordered after a month, but not after a verdict has been obtained, or twelve months have elapsed since the delivery of the bill, unless under special circumstances. Proceedings in actions are to be stayed during a reference. There is a proviso to the first of the seven clauses, that a judge may authorize an attorney or solicitor to bring an action within a month, on proof that there is probable cause that the party is about to quit England. Taxation may be ordered after payment, provided it is made within twelve months. All applications under this act are to be made in the matter of the attorney, and the amount certified by the proper officer to be due to be enforced. There are many other regulations as to the admission of persons as attorneys, and no attorney is to have more than two articled clerks at one time.

Barristers and attorneys are entitled to practise in the high court of Admiralty, by 22 & 23 V. c. 6, and barristers may exercise the same rights and privileges as advocates, and attorneys the same privileges as proctors. Attorneys to be subject to the like authority of the judge of the court, as in the court of Queen's Bench.

The 23 & 24 V. c. 127, alters the term of admission to practise under the 6 & 7 V. c. 73, and by s. 2, any person having taken the degree of bachelor of arts or bachelor of laws in the university of Oxford, Cambridge, Dublin, Durham, or London, or in the Queen's university in Ireland, or the degree of bachelor of arts, master of arts, bachelor of laws, or doctor of laws, in any of the universities of Scotland, none of such degrees being honorary degrees, and who at any time after having taken such degree has been bound and duly served under articles of clerkship to a practising attorney or solicitor for *three years*, and has been examined and sworn, may be admitted as an attorney or solicitor; and service for any part of the three years not exceeding one year with the London agent of such attorney or solicitor, either by virtue of any stipulation in such articles or with the permission of such attorney or solicitor, shall be deemed to have been good service under such articles for such part of the said term. Persons having been at the bar may be admitted after three years' service, so may clerks to attorneys or proctors for ten years, s. 3. Judges may make regulations for persons who have passed certain examinations before articles to be admitted after four years' service, s. 5, judges may require examination in general knowledge, either before articles,

before admission, with power to dispense therewith in special
es, s. 8; examination in legal knowledge may be required
ring articles. Articled clerks not to hold other office or employ-
nt. Remaining clauses refer to counties palatine, custody of
of attorneys, and the entry and renewal of certificate.

An attorney duly sworn, admitted, and enrolled in any of the
erior courts of law, may be sworn and admitted in the court of
ancery without fee or stamp duty, and may practise in bank-
cy and all inferior courts of equity; and so a solicitor in any
rt of equity may be sworn, admitted, and enrolled an attorney
the courts of common law.

By 23 & 24 V. c. 127, s. 26, every person who acts as an
orney or solicitor, or who in his own name, or in the name of any
er person, or in anywise acts as a proctor in or with respect to
proceeding in the court of Probate or the court for Divorce
Matrimonial causes, without being duly qualified so to act,
ll be deemed guilty of a contempt of the court in which the
ion or proceeding in relation to which he so acts is brought, and
y be punished accordingly, and shall be incapable of maintaining
action for his costs, and shall in addition to any other penalty
forfeiture, and to any disability to which he may be subject,
feit and pay for every such offence the sum of £50, to be
overed with full costs of suit by action brought with the sanction
her Majesty's attorney-general in the name of the Incorporated
w Society, in any of the superior courts of law at Westminster,
in any county court.

An attorney is bound to use care, skill, and integrity; but he is
responsible for any error or mistake arising in the exercise of
profession, 4 *Burr.* 2061. He ought personally to conduct his
business, which has been legally decided to be a *profession*,
a *trade*, and ought not to delegate matters of importance, that
uire skill and experience, to clerks, who are less informed and
ally irresponsible.

A party who entrusts papers to an attorney with an intimation
pay him if a certain property be recovered, is not liable for the
ts of an action commenced and abandoned at the attorney's dis-
tion, *Tabram* v. *Horn*, 1 *M.* & *R.* 228.

It is the duty of an attorney, before suing out a writ, to commu-
ate personally with his client, if possible; at all events to make
uiry into the nature of the claim, and of the evidence in supt
of it; otherwise he cannot recover for business done in the
, 1 *Tyrw.* 121.

The property in deeds, copies, and drafts, is in the client, not
attorney, *Allison* v. *Rayner*, 7 *B.* & *C.* 528. But an attorney
a lien for the amount of his costs upon the deeds and papers
t have come into his possession in the course of his professional
ployment, and also on any money recovered for his client. As
ther security, an attorney cannot be discharged by his client and

another substituted without a judge's order, which is never granted unless the attorney's bill has been first paid.

An attorney mixing purchase-money received with his own and paying it into his banker's hands on his own private account, has been held liable, in the event of the banker's failure, *Robinson* v. *Ward*, 1 *Ry. & M.* 274.

By reason of the supposed necessity of an attorney's presence in court, he is exempt from offices requiring personal service, as those of sheriff, constable, juror, and overseer of the poor. He is disqualified to be a justice of peace while in practice, unless it be in a city, town, or cinque port, having justices within their respective limits. And by 34 & 35 V. c. 18, the law disqualifying attorneys, solicitors, and proctors in practice from being justices of the peace for counties has been repealed; but it is provided, that no person shall be capable of becoming or being a justice of the peace for any county in England or Wales (not being a county of a city or county of a town) in which he shall practise and carry on the profession or business of an attorney, solicitor, or proctor; and where any person practises and carries on such profession or business in any city or town being a county of itself, he shall be deemed to carry on the same in the county within which such city or town or any part thereof is situate.

Nothing in the act is to affect coroners.

An act of 1870, the 33 & 34 V. c. 28, amends the law relating to the remuneration of attorneys and solicitors, by which their remuneration may be fixed by agreement in writing with their clients. But amount so agreed upon not to be paid until allowed by the taxing master.

By s. 18, upon any taxation of costs, the taxing officer may in determining the remuneration, if any, to be allowed to the attorney or solicitor for his services, have regard, subject to any general rules or orders to be made, to the skill, labour, and responsibility involved.

A material change in legal etiquette was made in 1852, by 15 & 16 V. c. 54, s. 10, authorizing a barrister to plead in a county court without previously receiving his instructions from an attorney.

III. PHYSICIANS.

These in rank and legal pre-eminence form the first class of medical practitioners, and are allowed by statute to practise physic in all its branches, surgery inclusive. But at present the practice of the physician is considered to be properly confined to the prescribing of medicines, which are to be compounded by apothecaries, and so far superintending the proceedings of the surgeon as to aid his operations by prescribing what is necessary to

the general health of the patient, and for the counteracting of any internal disease.

The Royal College of Physicians was first incorporated in 1518, and the charter then obtained is confirmed by 14 & 15 H. 8, c. 5, by which they may make by-laws. Eight of the chiefs of the college are to be called *elects*, who, from among themselves, are to choose a president yearly. Physicians in England to be examined by the college, and have testimonial letters from the president and three elects, unless they be graduate physicians of Oxford or Cambridge. Physicians practising in London, or within seven miles, without being approved, forfeit £5 ; and in any other part, unless approved by the bishop of the diocese, they are subject to the like penalty. By the 32 H. 8, c. 40, four physicians to be chosen by the college to search apothecaries wares, and in company with the warden of the mystery of apothecaries, may destroy adulterated drugs. Apothecaries refusing to be searched, forfeit £5 ; and physicians to act, 40s.

By 17 & 18 V. c. 114, every bachelor and doctor of medicine of the university of London is enabled, without further examination, to practise physic, as fully and in the same manner as graduates of Oxford and Cambridge, but the privilege is not to extend to the practice of surgery, pharmacy, or midwifery. Graduates who may have incurred penalties by practising in certain cases as physicians, before the passing of this act, are relieved, and certificates given and other acts done by them are declared valid.

The fees of a physician, like those of a lawyer, are honorary, and not demandable of right ; consequently a physician cannot maintain an action for them, 2 *T. R.* 317. With respect to surgeons, however, if is different. They may maintain an action for their care and attendance, and for medicines found and provided, 3 *Esq.* 192. And it will be seen (p. 251) that physicians may sue under the Medical Act of 1858, if registered, and not barred by a by-law of the college.

By 22 V. c. 21, s. 6, any person, not a British subject, having a degree, and regularly entitled to practise medicine in his own country, may act as a resident physician in any hospital established exclusively for the relief of foreigners.

Doubts having arisen as to the rights and privileges of the College of Physicians, under a new charter, concerning the validity of certain privileges, under 14 & 15 Hen. 8, c. 5, as to letters and testimonials from the "elects," so much of the statute of Henry as refers thereto is repealed by 23 & 24 V. c. 66.

IV. SURGEONS AND APOTHECARIES.

The business of surgeons is to deal in the mechanical part of physic by performing cures or operating with the hand, and they must not, in that capacity, administer medicine internally.

By the 32 H. 8, the surgeons and barbers were incorporated into one company; but at the same time a distinct line of division was drawn between the practice of the two branches. By the 18 G. 2, the union is dissolved, and the surgeons of London were made a separate corporation, with power to enjoy the same privileges as by former acts or grants, and this act is confirmed by a charter granted in the 40 G. 3. A new charter was obtained in the 7 V., by which they are styled the Royal College of Surgeons of England, and a portion of the members are to be fellows of the college. The council is increased from twenty-one to twenty-four, and all future members are to be periodically elected. There are to be ten examiners of surgeons for the college, to be elected by the council, either from the members of the council, or from other fellows of the college, or from both. The by-laws of the college comprise the regulations as to the examination and qualifications of candidates for the fellowship.

An action on the case lies against a surgeon for gross ignorance and want of skill in his profession, as well as for negligence and carelessness, to the injury of a patient, *Seare* v *Prentice*, 8 *E. R.* 348.

A medical practitioner, whether *licensed or not*, is criminally liable and guilty of manslaughter if the death of a patient be caused by his treatment, and he have shown gross ignorance of his art, or gross inattention to his patient's safety, or gross rashness in the application of a dangerous remedy, *Rex.* v. *St. John Long*, 4 *C.* & *P.* 398, 423.

A surgeon having a certificate from the College of Surgeons cannot recover for medicines and attendance on a patient in a typhus fever, without a certificate from the Apothecaries Company as well; a typhus fever not being a surgical case, 4 *Bing.* 619.

Of the apothecaries it may be remarked that they were originally associated with the grocers, but obtained a separate charter of incorporation from James I. in 1606. Their business is to prepare and administer the prescriptions of the physician, pursuant to his directions; or they practise physic on their own account, and administer medicines on their own responsibility. The business is generally combined with that of surgery, constituting the general medical practitioner.

The right of an apothecary to charge for attendance has been decided to be not matter of law, but to be implied from the usage of the place, *Smith* v. *Chambers*, 2. *Phillips*, 221 (*see* also 21 & 22 V. c. 90, post, p. 249).

V. PHARMACEUTICAL CHEMISTS.

Certain persons desirous of advancing chemistry and pharmacy, and of promoting an uniform system of education among those who

practise the same, formed themselves into a society called "The Pharmaceutical Society of Great Britain." This society was incorporated by royal charter, February 18, 1843, whereby it was provided that the society should consist of members who were chemists and druggists, or who had been established as such on their own account at the date of the charter, or who had been examined and certified at the council of the society as qualified for admission. For extending the objects of the society and the prevention of ignorant and incompetent persons assuming the title of pharmaceutical chemists, the 15 & 16 V. c. 56, enacts, that the charter of this society shall be confirmed, except as altered by the act.

Under this act, by s 2, power is given to the council to alter the by-laws, and to appoint a registrar, who is to make and keep a register of the members of the society, of associates, and students or apprentices. All persons being such are entitled to be registered. Persons are to be appointed to conduct examinations, whose certificates will grant right of registry. The council are also required to appoint examiners for Scotland, who have the same powers as the examiners in England. No member of the medical profession, or who is practising under the right of a degree of any university, or diploma or license of a medical body, to be entitled to be registered; and if any person who is registered become such, he is thereby disqualified from remaining on the register.

Any person who is not registered assuming the title of pharmaceutical chemist, incurs a penalty of £5. Registrar falsifying register. &c., guilty of misdemeanor. Persons forging false certificates guilty of misdemeanor.

The act contains no provision forbidding chemists and druggists, or others, who do not assume the title of pharmaceutical chemists, from dispensing medicine.

By 31 & 32 V. c. 12, 15 & 16 V. is amended. Persons selling or compounding poisons, or assuming the title of chemist and druggist, must, after the 31st December, 1868, be registered under this act, and conform to such regulations as to the keeping and selling of poisons as may be prescribed by the pharmaceutical society with the consent of the privy council. Apprentices and assistants must also be registered. Any persons who at the time of the passing of the act were duly admitted pharmaceutical chemists, or were chemists or druggists within the meaning of the act, are entitled to be registered without payment of any fee. The examiners under 15 & 16 V. c. 56, are to be examiners under this act. Examiners and registrars under 15 & 16 V. c. 56, to be examiners under this act; and the examiners are required to examine all persons tendering themselves for examination under the act, and to grant to such as are worthy of it a certificate of competent skill, and such certificate is to entitle the person receiving it to be registered as a chemist and druggist under this act. And the

examination is to be such as is provided by 15 & 16 V. c. 56, for the purposes of a qualification to be registered as an assistant under that act. Notice of the death of a pharmaceutical chemist or druggist must be given by the registrar of deaths to the registrar under the act, who shall erase such deceased person from the register. Chemists and druggists in business prior to 31st July, 1868, are eligible for election as members of the Pharmaceutical Society. Chemists and druggists registered are eligible to be elected associates of the Pharmaceutical Society, and being in business have the privilege of voting in the society on paying the same subscriptions as members. The rest of the act deals with the regulations to be observed in the sale of poisons, with penalties for wilful falsifications of a register, &c., and was slightly amended by 32 & 33 V. c. 117. (*See* also 35 & 36 V. c. 74, as to the adulteration of drugs.)

VI. ANATOMISTS.

The 2 & 3 W. 4, c. 75, after reciting the necessity of anatomical examinations for the cure and prevention of diseases, empowers the home secretary for Great Britain and chief secretary for Ireland to grant licenses to practise anatomy to any physician, surgeon, or medical practitioner, or to any student attending any school of anatomy, on application from the party, countersigned by two justices, certifying that the applicant is about to carry on the practice of anatomy.

Three or more inspectors to be appointed, with salaries not exceeding £100 each and expenses, who are to inspect places of anatomy, and make quarterly returns of subjects removed for dissection. Persons having lawful possession of bodies may submit them to dissection, unless the deceased had expressed a wish in his last illness to the contrary, or a known relative shall require the body to be interred without anatomical examination. A relative may object to dissection, although the deceased had expressed such to be his wish, after death. No body to be removed from the place of death till forty-eight hours after, nor till after twenty-four hours' notice to the inspector; or if no inspector be appointed, to some neighbouring medical person; nor unless a certificate, stating the cause of death, be signed by a medical person who had attended the deceased, or by a medical person called in after death, who to the best of his knowledge shall state the cause thereof, but who shall not be concerned in examining the body after removal; such certificate to be given to the party receiving the body for dissection. Anatomists not to receive or examine bodies without certificate. Anatomists on receiving a body to demand a certificate, to insert a copy thereof in a book, and within twenty-four hours transmit certificate to the inspector, with a return of the day, hour, and from whom the body was received, the date and place of death,

x, and (if known) the name, age, and last place of abode of
eceased. Book to be produced to inspector when required.
ay not to be practised until one week's notice of the place
en given to the secretary. Bodies to be placed in a decent
or shell before removal for examination, and provision made
parties removing them for their decent interment after: a
ate of such interment to be transmitted to the inspector
six weeks after the body was received. A licensed person
ble to prosecution or punishment for having in his possession
amination, or for examining, any body according to the act.
es not prohibit any *post-mortem* examination required to be
by competent legal authority.
ons offending against the act liable to imprisonment, not
ing three months, or to a fine not exceeding £50; and by 34
V. c. 16, power is given to the secretary of state to vary the
limited by s. 13 of 2 & 3 Will. 4, c. 75, as to the time within
certificates of interment are to be transmitted to the inspec-
districts.

VII. ACT REGULATING MEDICAL PRACTITIONERS.

21 & 22 V. c. 90, regulates the qualifications of practi-
in medicine and surgery; so that persons requiring medical
ay be enabled to distinguish qualified from unqualified prac-
rs. The act commenced October 1, 1858.
. 3, the General Council of Medical Education and Regis-
for the United Kingdom is established, with branch councils
land, Scotland, and Ireland. The general council to consist
person chosen from each of the several medical colleges and
sities of London, Edinburgh, Dublin, Aberdeen, Glasgow,
, Cambridge, and Durham, together with six persons nomi-
by her Majesty, with advice of privy council, four of whom
ppointed for England, and one each for Scotland and Ireland.
ers of the general council to form branch councils for such
of the United Kingdom to which branch councils shall be
ted, with the powers and duties prescribed by the general
. The president to be a member of all the branch councils.
embers of the general council must be qualified to be regis-
nder the act. Members of general council to be chosen for
ars, and to be capable of re-election, or of resignation by
o the president. General council to hold its first meeting
three months from the commencement of the act, at such
nd place as secretary of state may appoint, and the council
e rules as to the place and time of meetings; or, in the
e of rules, the president to summon by letter addressed to
ember. Acts of the council to be decided by the votes of a
ty, being not less than eight members present; president to
nd in case of equality to have casting vote. Power of coun-

cil to appoint an executive committee, of which not less than three to form a quorum. Registrar, treasurer, and other officers, to be appointed by the council. Fees for attendance and reasonable travelling expenses allowed, as fixed by general council and approved by secretary of state, s. 22.

Qualifications for Registry.—By s. 15, every person now possessed or becoming possessed of any one or more of the subjoined qualifications shall, on payment of a fee not exceeding £2, in respect of qualification obtained before January 1, 1859 [July 1, 1859, by 22 V. c. 21], and not exceeding £5, in respect of qualification obtained on and after that day, be entitled to be registered, on producing to the registrar of the branch council the document evidencing the qualification on which he seeks to be registered. Name and address, and evidence, may be sent by post. Subjoined are the qualifications required by schedule A for registration:—1. Fellow, licentiate, or extra licentiate of the Royal College of Physicians of London. 2. Fellow or licentiate of the Royal College of Physicians of Edinburgh. 3. Fellow or licentiate of the King and Queen's College of Physicians of Ireland. 4. Fellow or member, or licentiate in midwifery, of the Royal College of Surgeons of England. 5. Fellow or licentiate of the College of Surgeons of Edinburgh. 6. Fellow or licentiate of the Faculty of Physicians and Surgeons of Glasgow. 7. Fellow or licentiate of the Royal College of Surgeons of Ireland. 8. Licentiate of the Society of Apothecaries, London. 9. Licentiate of the Apothecaries' Hall, Dublin. 10. Doctor, bachelor, or licentiate of medicine or master in surgery of any university of the United Kingdom; or doctor of medicine by *doctorate* granted prior to act by the Archbishop of Canterbury. 11. Doctor of medicine of any foreign or colonial university or college, practising as physician in the United Kingdom before October, 1858, who shall produce certificate to satisfaction of council of having taken his degree of M.D. after regular examination, or who shall satisfy council, under s. 45 of the act, that there is sufficient reason for admitting him to be registered.

The above colleges and bodies may transmit to the registrar lists certified under seal of persons qualified to be registered, stating name, residence, and qualification, and paying the fees. Persons practising in England before August 1, 1815, entitled to be registered. General council may require information as to course of study and examination of the colleges and bodies giving a qualification. Colleges and bodies may unite for conducting examinations, and defects in study or examination may be represented to privy council, s. 20. Upon such representation, privy council may suspend right of registration in respect of qualification, s. 21. By s. 23, privy council may prohibit attempts to impose restrictions as to any theory of medicine or surgery by bodies entitled to grant certificates of qualification.

By s. 27, the general council to publish every year a correct register of the names, residence, and qualification of all persons on the register on the 1st of January in each year, to be called "The Medical Register," and the same to be evidence of registry or non-registry in courts of justice and before justices of the peace. Medical practitioner once convicted of felony may be struck off the register.

Privileges by Registry.—By s. 31, every person registered is entitled, according to his qualification, to practise medicine or surgery, or medicine and surgery, in any part of her Majesty's dominions, and recover in any court of law, with full costs of suit, reasonable charges for professional aid, advice, and visits, and the cost of any medicine or other medical or surgical appliance rendered or applied to his patients. But the College of Physicians may pass a by-law that none of their fellows shall sue under the act, and such by-law may be pleaded in law to an action by a member of the College. After January 1st, 1859 (altered by 22 V. c. 21, to July 1, 1859), none but persons registered will be entitled to recover by law their charges. Poor-law officers not disqualified to hold their offices, if registered within six months of the passing of the act (August 2, 1858). No person to be considered a legally or duly qualified medical practitioner, or recognized in law as a member of the medical profession, unless registered. Registered persons exempted from serving on juries and inquests, from all corporate, ward, hundred, or township offices, or from serving in the militia. Unregistered persons disqualified to hold any appointment as physician, surgeon, or other medical officer in the military or naval services; in emigrant or other vessels; or in any hospital, infirmary, dispensary, or lying-in hospital, not supported wholly by voluntary contributions; or in any lunatic asylum, gaol, penitentiary, house of correction or industry, parochial or union workhouse, or other public establishment; or in any friendly or other society; or be a medical officer of health. But not to alter provisions of Ship Passengers' Act of 1855.

Penalties.—By s. 37, no certificate of any medical practitioner will be valid if signed by one unregistered. Registrar falsifying a register, or any matter relative to registration, liable to twelve months' imprisonment. Obtaining registration by any false statement subjects to like punishment. Falsely pretending to be a registered practitioner subjects, on summary conviction, to a penalty of £20.

By s. 45, notice of death of medical practitioner in the United Kingdom to be given to the registrar. General council by special order may dispense with such provisions of the act or their own regulations, as they think fit, in favour of persons now practising in the colonies; also in favour of persons practising in the United Kingdom, on foreign or colonial diplomas or degrees before the

passing of the act; also in favour of persons who have held medical appointments in army or navy, service of East India Company, or are acting as surgeons in public service or service of any charitable institution; also in favour of medical students who have commenced their studies before commencement of the act.

By s. 47, a new charter may be granted to the Royal College of Physicians, with such alterations as may be expedient. A charter may be granted to Royal College of Surgeons to hold examinations for testing the fitness of persons to practise as dentists, and to grant certificates of fitness. Charter may be granted to College of Physicians of Edinburgh; that is, if the College of Surgeons of Edinburgh, and Faculty of Physicians and Surgeons of Glasgow, agree to amalgamate, a charter may be granted them; and a charter may be granted to King's and Queen's College of Ireland. Such charters not to contain new restrictions as to the practice of medicine.

Provisions of 17 & 18 V. c. 114, as to University of London (p. 245), to continue in force. By s. 54, general council to publish a list of medicines and compounds, the manner of preparing them, with the true weights and measures, to be called the "British Pharmacopœia." Nothing in the act is to affect chemists, druggists and dentists in their lawful occupation; nor duly licensed apothecaries in Ireland. (As to stamp duties payable for admission as barrister, attorney, etc., see 33 & 34 V. c. 97, post, Part IV.)

CHAPTER XVI.

Authors, Publishers, Printers, Engravers, Sculptors, Designers, and Newspaper Proprietors.

LITERARY property may be defined to be the product of [illegible] intellect, published to the world under such conditions as [illegible] on the author or his assignee the exclusive right of publication, [illegible] of all benefits accruing therefrom. The peculiarity of this [illegible] of property consists in its intangible nature, which leaves no [illegible] for applying to it the ordinary criteria of possession or occupa[illegible] by which material property is ascertained, and a peculiar law [illegible] thus become necessary for its protection. A manuscript [illegible] painting, while the former is not printed or the latter engra[illegible] is viewed as material property, subject to the ordinary rul[illegible] possession. It is when copies are multiplied for publication [illegible] the specialities of literary property are constituted and bro[illegible] into existence.

The general diffusion of literature and great value of popu[illegible] compositions, have given to the productions of the press

importance unknown to a former period. Consequently it is important to recapitulate the laws relative to literary property, and the regulations by which author and publisher are secured in the enjoyment of the profits resulting from their labours and purchases.

With respect to the *originality* of a literary composition, it consists in the *sentiment* and *language;* the same conceptions, clothed in the same words, must necessarily be the same composition; and whatever method be taken of exhibiting that composition to the ear or eye of another, by recital, writing, or printing, it is always the identical work of the author which is so conveyed; and no one has a right so to use it without his consent.

A *fair* and *bonâ fide* abridgment of any book is considered a new work; and however it may injure the sale of the original, yet it is not deemed a piracy, or violation of the author's copyright; and, in the case of *Kearsley* v. *Carey*, Lord Ellenborough held that variance in *form* and *manner* was a variance in substance, and any material alteration, which was an improvement, would not be considered a piracy. But in all abridgments, and also history, chronology, dictionaries, and the like, it must be left to the jury to determine whether the publication complained of is a *servile* copy and *imitation*, meant to supersede another, or an original work upon the same subject.

No one but the author, or his assignee, has the right to print or publish *original* notes, or *additions* to an old work, though the chief copyright may be open, and any person has liberty to publish the original work, without the notes or improvements, *Carey* v. *Longman*, 1 *E. R.* 358.

A translation of a work, either from the dead languages, or of a work written in Latin by an Englishman, or of papers in any of the modern European languages, has been held to be copyright.

An author has a copyright in his *manuscript* before it is printed, 2 *B.* & *A.* 298, and the *gift* of it to another does not of *itself* convey the right to publish by printing or otherwise; for the court of Chancery will interfere to restrain the publication of the manuscript of a deceased person; and the letters of a deceased person are the subject of copyright in the representatives, if of a literary nature; or, if their publication involve a breach of confidence, or tend to wound private feelings, an injunction may be obtained.

Every assignment of copyright, to be valid, must be *in writing*, and be attested by two credible witnesses; no assignment by parol is sufficient, not even of a song, *Power* v. *Moore*, 3 *M.* & *S.* 7.

If an author print and publish abroad, and do not use due diligence to be the first printer or publisher here also, any third person, procuring the work from abroad, may lawfully print and publish it here, 2 *Bar.* & *Cress.* 871. An alien author may acquire

a British copyright by *first* publishing his work in England; this was decided by Chief Justice Campbell, sitting in appeal in the court of Exchequer Chamber, May 20, 1851, in *Boosey* v. *Jeffrey*; thereby reversing the previous copyright law of the superior courts in *Boosey* v. *Purday*.

It has been decided in *Jeffrey* v. *Boosey* (House of Lords, Aug. 1854), that a foreigner may have copyright in a work composed and published in England, or if first published in England by a foreigner resident here at the time of publication, though he has only been resident here for a week or a day.

II. COPYRIGHT ACT.

Copyright has been considered by the common law a perpetual right, vested in the author of a literary composition, but the duration of the right, the mode of its registry and assignment, are now regulated by the 5 & 6 V. c. 45. According to this act, copyright is defined to be the right of printing or multiplying the copies of a book; and a book is explained to include any volume, part or division of a volume, pamphlet, sheet of letter-press, *map*, *chart*, or *plan*, separately published.

Duration of copyright.—After the passing of the act, July 1, 1842, it is provided that in every book published in the lifetime of the author, the author and his assign shall have copyright for the term of the author's life and for seven years after his death, or if these seven years expire before the end of forty-two years from the time of publication, then for the period of forty-two years. So that as respects books published *since* the act commenced, the copyright subsists either for forty-two years certain, or during the author's life and seven years.

Secondly, as respects books published *before* the act commenced, in which copyright still subsisted, the copyright is continued for the full terms provided in the case of books published subsequent to the act, except in cases where the copyright belongs wholly or in part to a person other than the author, who has acquired it for "other consideration than that of natural love and affection." That is, except in the case of purchased copyright, not being copyright acquired by gift, will, or inheritance. In the excepted cases, however, the author, or his personal representative, and the proprietor of the copyright, may agree before the expiration of the subsisting term of copyright, to accept the benefits of the act; and a minute of such agreement being entered in the registry at Stationers' Hall, the copyright will be continued, as in other cases, for the author's life and seven years after his death, or for forty-two years from the time of publication, and will be the property of the person or persons specified in the minute.

[redacted], the copyright of a book published after the death of

the author is to endure for forty-two years from the time of publication, and to belong to the proprietor of the manuscript from which it is first published, and his assign. To prevent the suppression of any book of importance, which the proprietor refuses to publish after the author's death, the Judicial Committee of the Privy Council may, on complaint, license the work to be published, subject to such conditions as it may deem fit.

Lastly, the copyright in encyclopædias, reviews, magazines, periodical works, and works published in a series, is vested in the proprietors or projectors who shall have *employed* and *paid* persons to compose them, the same as if they were the authors; but in the case of essays, articles, or portions forming part of and first published in periodical works, the right of republishing reverts to the author after *twenty-eight years* for the remainder of the term given by the Copyright Act: and pending the twenty-eight years the publisher or projector has not the right to publish any such essay, article, or portion, separately, without consent of the author or his assign. Serial works may be entered as a whole at once in the registry at Stationers' Hall, and have the benefit of such registration.

A perfect printed copy of the whole of every book, and of any subsequent edition published with *additions* or *alterations*, is to be delivered within one calendar month after publication to the British Museum, between ten and four o'clock of the day, on any day except Sundays, and Ash Wednesday, Good Friday, and Christmas Day, to the officer appointed to receive the same; and a copy of every book to be delivered in like manner, within a month of the demand, to the officer of the Stationers' Company for the following libraries, namely, the Bodleian, the public library at Cambridge, the Faculty of Advocates at Edinburgh, and that of Trinity College, Dublin: or the publishers may deliver the copies direct to the libraries, instead of doing so to the Stationers' Company; the neglect of delivering such copies to subject the party to a penalty of £5, to be recovered by any authorized officer in an action of debt. A book of registry is to be kept at Stationers' Hall; such registry to be open to inspection on payment of 1*s.* for every entry which shall be searched for or inspected, and a certificate of the same is to be given by the clerk when required, on payment of 5*s.*; such certificate to be received in all courts as *prima facie* proof of the proprietorship or copyright of such work. Making or causing to be made any false entry, to subject the party to the penalties of an indictable misdemeanor.

The proprietor of any copyright, on payment of 5*s.*, may require an entry to be made in the registry of the title, time of first publication, names and abodes of the publisher and proprietor, in a prescribed form; and such proprietor may assign his interest or a part thereof, by making an entry of the same in the registry, such assignment to have the force of a deed, without being sub-

ject to any stamp or duty. Persons aggrieved by any entry in the book of registry may apply to a court of law in term, or to a judge in vacation, who may order such entry to be varied or expunged.

Any person pirating any such work is rendered liable to a special action, and the defendant is required to give the plaintiff notice of the objections to the plaintiff's title on which he means to rely; and no person, except the proprietor of the copyright, shall be allowed to *import into the British dominions, for sale or hire, any copy of such book reprinted elsewhere*, under the penalty of forfeiture of the book; the officers of customs or excise are also empowered to seize such books, and persons so offending, convicted before two justices, are liable to a penalty of £10 and double the value of every copy of the book so imported, £5 to the officer, and the remainder of the penalty to the proprietor.

All copies of books pirated are to become the property of the proprietor of the copyright, and may be recovered by action, with damages for their detention; but no proprietor of copyright commencing after the act shall maintain any action or suit for any infringment thereon before making an entry in the book of registry; the omission of the entry, however, not to affect the title in the copyright, but only the right to sue as aforesaid, and not to prejudice the remedies which the proprietor of the sole liberty of representing any dramatic piece may have under the 3 & 4 W. 4, c. 15, although no entry be made of it in the book of registry.

All copyrights are declared to be personal property, and capable of bequest. Actions for offences against the Copyright Act must be brought within twelve months after the commission of the offence, but such limitation not to extend to actions brought for non-delivery of copies of books to the British Museum and the libraries named.

The rights and privileges of the universities of Oxford and Cambridge, and their colleges, the four universities of Scotland, Trinity College, Dublin, and the colleges of Eton, Westminster, and Winchester, are not affected, nor any subsisting rights, contracts, or engagements. The act extends to the United Kingdom, and to every part of the British dominions.

The 10 & 11 V. c. 95, under the authority of an order in council, allows British works reprinted abroad to be imported into our colonial possessions, provided the colonial legislature or authorities have previously made provision for the protection of the copyright interest of their authors in this country.

It appears from *Reade* v. *Conquest* that, by the act of Anne and the 6th Victoria, an author has only a statutable right over his works; that the *dramatizing* of a novel does not come within the meaning of the statutes as applied to the infringement of copyright; and that at common law an author can plead no right and prove no tort at all.

III. INTERNATIONAL COPYRIGHTS.

By 7 & 8 V. c. 12, the queen is empowered, by order in council, to direct that the authors, inventors, designers, engravers, or makers of books, prints, articles of sculpture, and other works of art to be defined in such order, and first published in a foreign country, shall have copyright therein within her Majesty's dominions, during the period mentioned in the order, which shall not, however, exceed the period granted under previous acts to works of the same kind first published in this country. The enactments of the Copyright Act (5 & 6 V. c. 45) are to apply to such books, prints, sculptures, &c., unless excepted in the order, and except the enactments for the delivery of books to the British Museum and the other libraries. Authors and composers of dramatic pieces and musical compositions, first publicly represented and performed in foreign countries, to have similar rights.

No person claiming the privileges of this act, whether the author, inventor, engraver, or his executors or assigns, shall be entitled to its benefits unless their works shall have been registered within a time to be prescribed by the order in council, and according to a form provided in the register book of the Stationers' Company in London; a copy of each book and print to be also deposited there. In case of a book being published anonymously, the name of the first publisher to be sufficient. The provisions of the 5 & 6 V. c. 45, regarding entries in the register book of the company, are to apply to entries under this act, save that the sum to be demanded for making the entry is to be 1*s.* only.

All copies of books wherein there shall be any subsisting copyright by virtue of this act, or of any order in council, printed or reprinted in any foreign country except that in which such books were first published, shall be and the same are hereby *absolutely prohibited to be imported into any part of the British dominions*, except with the consent of the registered proprietor of the copyright, or his agent, authorized in writing; and if imported contrary to this prohibition, the same and the importers thereof shall be subject to a special action on the case, at the suit of the proprietor of such copyright.

The periods of copyright for different foreign works, and for different foreign countries, to be specified by the orders in council; but no order in council is to have effect unless it states that *reciprocal protection is insured.*

No author, composer, inventor, designer, &c., of any work first published in foreign countries, to be entitled to copyright, or any exclusive right to public representation, &c., except under the provision of this act.

Pursuant to the principles of this statute, a convention for the establishment of international copyright has been concluded be-

tween England and Prussia, which extends to works of literature and the fine arts which may be first published in either of the two states the same privileges as the other state, in regard to copyright, which are enjoyed by similar works first published in such other state. Such works must be respectively registered conformably to the law of the two countries; in England with the Stationers' Company, and in Prussia with the Minister for Ecclesiastical, Educational, and Medical affairs. It was further agreed that the duties on the exportation of books, prints, or drawings from Prussia shall be reduced. This convention commenced September 1, 1846, the 9 & 10 V. c. 58 having been passed to give effect to its provisions. A similar convention was concluded with Saxony.

Nov. 3, 1851, a convention was concluded with France for the establishment of international copyright, and the 15 & 16 V. c. 12, passed for carrying into effect its stipulations. This act repeals s. 18 of 7 V. c. 12, and extends and explains the law as to international copyrights, by providing that by an order in council the authors of books published in any foreign country named in the order may, for any time not exceeding *five years*, prevent any unauthorized translation of their works published either whole or in parts. Similar protection is extended for foreign dramatic pieces first published or represented abroad, against the unauthorized representation of any translation of them in the British dominions; but this is not to prevent the imitation or adaptation to the English stage of any foreign dramatic or musical composition. All articles in newspapers relating to politics may, however, be translated or republished, provided the source of them is acknowledged, unless the authors of such articles have notified their intention to reserve the copyright.

A treaty was concluded by Great Britain with Sardinia in November, 1860, for the reciprocal security of copyright in books, dramatic works, musical compositions, paintings, sculpture, engravings, and lithography or other works of literature and art. This treaty, it may be assumed, will extend over the entire kingdom of Italy.

But to entitle foreign authors in England to protection, their works must be registered as mentioned under 7 V. c. 12, within three calendar months after first publication abroad. They must also notify on the title-page that it is their intention to reserve the right of translation; and such translation must appear within a year after registration, and the whole of such translation within three years. In case of dramatic pieces, the translation sanctioned by the author must be published within three months of registering. Similar conditions are requisite in respect of protected newspaper articles.

The following is the scale of duties (*Order in Council, Jan.* 10, 1852) :—On English works published in France and exported into

the United Kingdom £2 10s. per cwt.; on original French works exported into the United Kingdom, 15s. per cwt.; on French prints and drawings, plain or coloured, exported into the United Kingdom, single each ½d., or bound or sewn, the dozen, 1½d.

IV. COPYRIGHT IN LECTURES AND THE DRAMA.

By 5 & 6 W. 4, c. 65, the author or assignee of any lecture has the sole right of *delivering*, *printing*, or *publishing* the same: penalty for infringement, forfeiture of copies of the lecture, and one penny per sheet. Printers or publishers of newspapers publishing lectures without leave subject to like penalties. Act does not extend to lectures of the delivering of which notice in writing has not been given to two justices living within five miles from the place two days at least before the delivery; nor to any lecture delivered in any university, college, public school, or foundation.

By 3 & 4, W. 4, c. 15, the author of any *tragedy*, *comedy*, *play*, *opera*, *farce*, or other dramatic piece or entertainment, composed and not printed or published by the author or his assignee, has the sole right as his own property of representing or causing it to be represented at any place of dramatic entertainment in the United Kingdom or British dominions; and the author of any such production, printed and published within ten years before the passing of this act (June 9, 1833), or which shall be hereafter printed and published, or his assignee, shall from the passing of this act, or from the time of such publication respectively, until the end of *twenty-eight years* from the day of such first publication, or, if the author survive at the end of this period, to his death, have the sole right of representation in any place aforesaid; but not to invalidate the condition of any consent given by the author prior to the act. Penalty for the violation of the rights of the author not less than 40s. for each representation, or to the full amount of the benefit arising from such representation, or the loss sustained by the plaintiff. Actions to be commenced within twelve months after commission of offence.

By 5 & 6 V. c. 45, the provisions of this act are extended to *musical* compositions; by which the copyright in musical compositions is more extensively protected than that in dramatic pieces under 3 & 4 W. 4, c. 15; *Russell* v. *Smith*, 15 *Sim.* 181.

From the case of *Boucicault* v. *Delamere* it appears an English dramatist can have no copyright in his own country for a piece originally produced in America, unless he has complied with the provisions of the acts.

V. ENGRAVINGS, PRINTS, LITHOGRAPHS, PAINTINGS, DRAWINGS, AND PHOTOGRAPHS.

The property in *designs*, *prints*, and *engravings* is guaranteed for the term of twenty-eight years from the date of the first pub-

lication, which date with the name of the artist, must be inscribed on the plate; any person infringing this right by copying, altering, selling, or exposing to sale, without the written consent of the proprietor, signed before two witnesses, any prints, forfeits the plate and copies, and *5s.* for every print found in his possession, 8 G. 2, c. 13, s. 1; 7 G. 3, c. 38; 17 G. 3, c. 57; 6 & 7 W. 4, c. 49. To remove doubts on these acts, the 15 V. c. 12, s. 14, enacts that the protection afforded by them extends to prints taken by lithography. Persons purchasing the *original* plate of the proprietor may print therefrom without incurring the penalties.

Prior to 1862 the authors of paintings, drawings, and photographs had no copyright in their works. Such absence of protection is remedied by 25 & 26 V. c. 68, and the copyright of such works hereafter made or sold is vested in the author, being a British subject or resident, for his life, and for seven years after his death. In a work executed for another person for a valuable consideration, the author parts with the copyright unless expressly reserved to him by agreement in writing, signed by the vendee or assignee before the sale or disposition. But by s. 2, nothing in the act is to prejudice the right of any person to copy or use any work in which there is no copyright, or to represent any scene or object in which there may be copyright in some representation of such scene or object.

In the spirit of this act it was decided in the Common Pleas, May 2, 1863, in *Gambart* v. *Ball*, that copies of *engravings* taken by photograph are an infringement of copyright.

The property in any original *sculpture*, *model*, or *bust*, of the human figure, or any animal, is secured for the term of fourteen years; and if the artist survive that time for fourteen years additional, provided the name of the proprietor and date of first publication be inscribed, as in the case of engravings, 54 G. 3, c. 56.

By 13 and 14 V. c. 104, the registrar of designs may upon application of the proprietor of any *sculpture*, *model*, *copy*, or *cast*, within the protection of the acts, and being furnished with a copy, drawing, or description sufficient to identify the same, register such sculpture, model, &c., for the whole or any part of the term of copyright. After such registration, sculpture, &c., protected against the import or exposure to sale of any piratical cast, but the word "registered" must be marked, and the date of registration.

Voluntary associations, under the name of "Art Unions," had been formed in various parts of the United Kingdom for the purchase of paintings, drawings, or other works of art, to be distributed by chance among the subscribers, or the raising of sums of money to be distributed by chance and so expended; but doubts having arisen whether such associations were not liable to the penalties, as lotteries, little-goes, and unlawful games, the

) & 10 V. c. 48 was passed to legalize their existence. Unions, lowever, of this description, to be legal, must be incorporated by oyal charter, or the deed of partnership or other instrument onstituting the association, and their rules be previously pproved by Her Majesty s privy council. The charter of deed onstituting the art union may be subsequently annulled by the rivy council if the union be perverted from the object of its stitution.

VI. DESIGNS IN THE MANUFACTURING ARTS.

These are mainly regulated by the Designs Act, the 5 & 6 V. . 100, by which the grant of copyright is given to any new and riginal design, whether applicable to the ornamenting of any rticle of manufacture, or of any substance, artificial or natural, r partly artificial and partly natural, and that whether such lesign be so applicable for the pattern, or for the shape or onfiguration, or for the ornament thereof, or for any two or more uch purposes, and by whatever means such design may be so pplicable, whether by printing, painting, embroidery, weaving, ewing, modelling, casting, embossing, engraving, staining, or y any other means, separate or combined; and that the proprietor of such design, not previously published within the Inited Kingdom, have the sole right to apply the same to any rticle of manufacture or substance, for the respective terms ubjoined, that is :—

In respect of the application of such design to ornamenting any article of manufacture contained in the first, second, third, fourth, fifth, sixth, eighth, or eleventh of the classes following, for the term of *three years*.

In respect of the application of such design to ornamenting any article of manufacture contained in the seventh, ninth, or *tenth* of the classes following, for the term of *nine calendar months* [extended to three years in respect of tenth class, by 21 & 22 V. c. 70].

In respect of the application of such design to ornamenting any article of manufacture or substance contained in the twelfth and thirteenth of the classes following, for the term of *twelve calendar months* :—

Class 1. Articles of manufacture composed wholly or chiefly of any metal or mixed metals.—2. Articles composed wholly or chiefly of wood.—3. Articles composed wholly or chiefly of glass.—4. Articles composed wholly or chiefly of earthenware.—5. Paper-hangings.—6. Carpets.—7. Shawls, if the design be applied solely by printing, or by any other process by which colours are produced upon tissue or textile fabrics.—8. Shawls not contained in Class 7.—9. Yarn,

thread, or warp, if the design be applied by printing, or by any process by which the colours are produced.—10. Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more such materials, if the design be applied by printing, or other process by which colours are produced upon tissue, or textile fabrics, excepting the articles included in Class 2.—11. Woven fabrics composed of linen, cotton, wool, silk, or hair, or of any two or more of such materials, if the design be applied by printing, or by any process by which colours are produced upon tissue or textile fabrics, such woven fabrics coming within the description technically called *furnitures*, and the repeat of the design shall be more than twelve inches by eight inches.—12. Woven fabrics not comprised in any preceding class.—13. Lace, and any article of manufacture or substance not comprised in any preceding class.

The above act being confined to designs "applicable to the ornamenting of any article of manufacture," its provisions are extended, by 6 & 7 V. c. 65, to designs not ornamental, but having reference to some purpose of *utility*, so far as such designs shall be for the shape or form, and have been unpublished; such copyright to be registered, and to exist for three years from the date of registration, but each article must bear the word "registered" upon some part of it, with the date of registration, or the benefit of the act to be forfeited. Any article wrongfully so marked, or advertised for sale as registered, subjects the person offending to a penalty not exceeding £5, nor less than £1. Floor and oil cloths are to be included in Class 6, of carpets. The appointment of a registrar under the provisions of the former act is repealed, and the Board of Trade empowered to appoint a registrar and other officers for carrying both the acts into effect, and to fix their remuneration. The powers of the registrar are then defined; one of his duties being to prepare an index of the titles of the designs not ornamental, to be inspected by any one on the payment of a fee, and after the expiration of the copyright the designs themselves (which are to be furnished to the registrar at the time of registration) may be inspected and copied upon payment of a fee.

These acts are extended under 13 & 14 V. c. 104, by which the registrar of designs, upon application by the proprietor, may register provisionally for *one year* any design not previously published in the United Kingdom or elsewhere. During the continuance of such provisional registration new designs are protected against piracy under the like penalties given in the Designs Act, 1842. The *exhibition* of provisionally registered designs in any place, whether public or private, in which articles are not sold, or exposed or exhibited for sale, and to which the

public are not admitted gratuitously, or in any place certified by the Board of Trade to be a place of public exhibition within the meaning of this act; or the publication of any account or description of any design exhibited or exposed in any such place of exhibition or exposure, in any catalogue or periodical, or otherwise, shall not prevent the proprietor from registering such designs under the Designs Act, at any time during the continuance of the provisional registration, in the same manner as if no such registration or publication had been made, provided the articles exhibited have attached the words "provisionally registered," with the date of registration. Sale of articles with provisionally registered designs renders null the registration; but the design itself may be sold. Period of provisional registration may be extended by the Board of Trade.

Designs for ornamenting ivory, bone, papier-mâché, and other solid substances, may be registered under the Designs Act for three years, and the term be extended by Board of Trade.

By 21 & 22 V. c. 70, s. 4, copyright in designs not to be prejudiced, if articles be marked with name and address of proprietor, and the word "registered" Any pattern or portion of an article of manufacture in lieu of copy or description may be registered. Proprietor of extended copyright, being applied to, to give the number and date of registration under a penalty of £10. Penalty on applying any mark of registration to an article not registered, £10, with full costs of suits.

The court of Queen's Bench decided in December, 1864, that s. 5 of this act, which provides that the registration of any pattern, or portion of an article of manufacture to which a design is applied, instead or in lieu of a copy, drawing, print, specification, or description in writing, shall be sufficient, applies to cases where the novel design is a combination, as well as to cases where it is a simple design, complete in itself. The point arose in the case of *Macrae* v. *Holdsworth*, where the inventor of a design to be applied to woven fabrics, consisting of the combination of a certain ground-work with ornamental stars of a particular form, had registered a portion of the woven fabric to which the design had been applied, unaccompanied by any explanation or description of the design which he claimed as his invention.

By s. 8, proprietor of design may institute proceedings for the prevention of piracy in the county court of the district in which piracy has been committed, delivering with his plaint the date and other particulars of registration.

The 24 & 25 V. c. 73 extends the phrase in the above acts (provided the same be done within the United Kingdom), by enacting that the same shall apply to every such design as therein referred to, whether the application be done within the United Kingdom or elsewhere, and whether the inventor or proprietor of such design be or not a subject of her Majesty.

VII. PREROGATIVE COPYRIGHTS.

The copyright of certain works is exclusively vested in the crown, for different reasons. 1. The queen, as the executive magistrate, has the right of promulgating to the people all acts of state and government : this gives her the exclusive privilege of printing, at her own press, or that of her guarantees, all acts of parliament, proclamations, and orders of council. 2. As head of the Church, she has a right to the publication of all liturgies and books of divine service. 3. She has a right, by purchase, to the copies of such law books, grammars, and other compositions, as were compiled or translated at the expense of the crown. And upon this last principle the exclusive right of printing the translation of the Bible has been maintained. 4. And, lastly, almanacks have been said to be prerogative copyrights, either as things derelict, or else as being substantially nothing more than the calendar prefixed to the liturgy ; but the patent for this has been declared void, and prerogative copyright may be said generally to rest on doubtful grounds.

The most important of these exceptional copyrights is that of the Holy Scriptures. In England the exclusive right of printing Bibles is enjoyed by the queen's printer, concurrently with the two universities ; in Ireland, the monopoly of the queen's printer is shared with Trinity College ; in Scotland, the whole was in the hands of the queen's printer till 1838, when the patent expired, and the right of printing was vested by the crown in a board of commissioners.

Any infringement of the copyright of works vested in the universities of England and Scotland, or Trinity College, Dublin, or the colleges of Eton, Winchester, and Westminster, subjects the piratical copies to forfeiture, and a penalty per sheet.

VIII. INDUSTRIAL EXHIBITIONS.

An act of 1865, the 28 & 29 V. c. 3, provides for the protection of works of art and industry, manufactured or contributed wholly or in part by the industrial classes to *public exhibitions*. By s. 2, power is given to the Board of Trade to certify, if they think fit, that any purposed exhibition is in their judgment calculated to promote British art and industry, and be beneficial to the industrious. Certificate of the board to certify the place and time of holding such exhibition, but time allowed not to exceed six months. Exhibition of new inventions not to prejudice patent rights, nor the exhibition of designs to prejudice the right of registration under the Designs Act of 1842, and by 33 & 34 V. c. 27, the exhibition of any new invention shall not prejudice the right of the exhibitor, where he is the true and first inventor, to leave within six

months of the opening of the exhibition a petition for the grant of letters Patent for such invention at the office of the Commissioners of Patents, nor is the exhibition of any new design to prejudice the right of any person to register such new design.

IX. REMEDY AGAINST INFRINGEMENT OF COPYRIGHT, &c.

Upon the principle of preventing a civil injury which a court of equity can only redress, the court of Chancery interferes to protect the owners of literary copyright, by issuing an injunction to restrain the sale of pirated copies, and an order to produce an account of such copies printed and sold.

The principle on which the court interferes is *the protection of property*: it requires, therefore, a clear title in the party complaining as the condition of its interference. It follows from this, that the copyright must be properly vested in the prosecutor, and that the work must be of such a nature that damages might be recovered in a court of common law for pirating it; that is, it must be a work neither of an *immoral*, *blasphemous*, *libellous*, nor *seditious* character. This, however, must be understood of its prevailing tenor, not of isolated passages. The general rule appears to be, that any work containing matter against which a public indictment or private prosecution could be sustained is not protected by the law, but may be pirated with impunity; and the parties, if sued for penalties, may adduce the objectionable contents of the work to defeat the action. A remarkable exception this to the general rule of law that none shall take advantage of his own wrong; and its operation is often as remarkable, the effect of the rule being to disseminate more widely that which the law declares unworthy of regard.

Upon these dicta it has been decided that no action can be maintained for pirating a work which professes to be the *amours of a courtesan*; and it is no answer to the objection that the defendant is also a wrong doer in publishing them, and that he, therefore, ought not to set up their immorality, 2 *Car. & Pay.* 163. An action cannot be maintained even on a bill for *printing* a grossly immoral and indecent work, 1 *Ry. & M.* 337.

In *Lawrence* v *Smith* an injunction to restrain the infringement of a copyright in a work, as to which it appeared doubtful whether it did not tend to impugn the doctrine of the Scriptures, was refused, *Jac.* 471.

A voyage of discovery having been executed, a narrative of it, prepared under the order of the crown, is the property of the crown; but on a bill by the publisher, authorised by the secretary to the Admiralty to publish such narrative, the profits remaining at their disposition, an injunction, restraining the publication by a stranger, was dissolved, 3 *Swanst.* 687.

If the right or infringement of copyright be disputed in *fact*, the court will sometimes direct an issue to be tried at common law, and finally sustain or dissolve the injunction according to the result of that trial.

CHAPTER XVII.

Patentees and Inventors.

A right of *patent*, or the exclusive privilege of making and disposing of a new invention for the period of *fourteen* years, is secured by the 21 Jac. 1, c. 3; and most probably it was this statute which suggested to the Legislature under Queen Anne the first law for the limitation of copyright.

By 5 & 6 W. 4, c. 83, amended by 2 & 3 V. c 67, an attempt was made to obviate some of the defects of the patent laws, and better to secure the rights of inventions and discoveries. One hardship of the former system was the destruction of all right to a patent which resulted from an inadvertent claim put into any part of an invention that might not actually be new, although that circumstance should be unknown to the inventor; and even although the part claimed should be a small and unessential portion of the new invention. This defect was obviated, and a patentee who finds he has been anticipated in some portion of his invention may disclaim that portion, and still retain his exclusive privilege in the remainder. If a patentee have reproduced some old invention, believing himself to be the inventor, a power was vested in the crown to continue the patent of the patentee, when it appears that the invention had not been publicly and generally used. A patentee is protected from vexatious actions questioning the validity of his patent, the certificate of the judge who tried one action operating as a bar to future suits. Lastly, an important advantage was given by the power vested in the crown, of extending, on the recommendation of the privy council, the term of a patent from fourteen to twenty-one years. Under the old law a valuable patent often expired just about the time the difficulties attending its first introduction had been surmounted, and it was beginning to be profitable to the inventor.

In 1852 the patent laws were further amended, the facilities for obtaining letters patent for inventions extended, and the law respecting them materially altered, by 15 & 16 V. c. 83. Under this act a commission is constituted, consisting of the lord chancellor, the master of the rolls, the attorney and solicitor general for England, the attorney and solicitor general for Ireland, and the lord advocate and solicitor general for Scotland, for the time being,

with such other persons as her Majesty may appoint from time to time; a commission of whom three may act, the lord chancellor or the master of the rolls being one. The commission is empowered to make regulations, which are to be laid before parliament, and they are required to report to parliament annually.

The act provides that every petition for the grant of letters patent, and the declaration required to accompany such petition, shall be left at the office of the commissioners; and there shall be left therewith a statement in writing (the provisional specification) signed by or on behalf of the applicant, describing the nature of the invention. The application is then to be referred to one of the law officers of the crown, who is at liberty to call to his aid such scientific or other person as he may think fit, and to cause remuneration to be paid to such person. The law officer, if satisfied, may give a certificate of allowance, and thereupon provisional protection is extended to the invention for six months. The inventor, however, may deposit in lieu of a provisional specification a complete specification, and such deposit will confer for six months the like rights as letters patent, but will not invalidate letters patent granted to the first inventor. The letters patent must be taken out before the expiration of the provisional protection, or the inventor will lose his right to them. They are to be valid for the whole of the United Kingdom, the Channel Islands, and the Isle of Man; but fees will have to be paid for recording the patent in the court of Chancery in Scotland. The commissioners are to cause applications to be advertised, also oppositions and protections. Letters patent for foreign inventions are not to continue in force after the expiration of the foreign patent; nor are patents for British inventions to prevent the use of such inventions in foreign ships resorting to British ports, except the ships of foreign states in whose ports British ships are prevented from using foreign inventions.

The act further provides that the commissioners are to cause indexes to be made of specifications, disclaimers, and memoranda of alterations heretofore or to be hereafter filed, which may be printed and published; and a register of patents, and also a register of proprietors, are to be kept, to be opened at convenient times to the inspection of the public under regulations.

Prerogatives of the crown saved in respect of the grant of letters patent. If letters patent be destroyed or lost, other letters patent may be issued. Specifications to be filed instead of being enrolled. In case of infringements, courts of common law may grant injunctions. Account of salaries, fees and compensations to be laid before parliament.

Parts of sections 28 and 33 of the 15 & 16 V. c. 83, which required an extra copy of drawings to be left with a specification, are repealed by 16 & 17 V. c. 115. By s. 2, copies of provisional specifications are to be open to public inspection at the commis-

sioners' office. A copy of every specification under the hand of the patentee or applicant to be left at the office. Lord chancellor, in certain cases, may seal letters patent after the expiration of provisional protection. Doubts are removed by s. 7 respecting the making and sealing of new letters patent for a further term.

The 16 & 17 V. c. 5, substitutes *stamp duties* for fees on passing letters patent, and empowers the commissioners to purchase for public use the indexes of the 15,000 specifications prepared by Mr. Woodcroft. The following is the schedule of the stamp duties made payable in lieu of the sums under the act of 1852:

	£	s.	d.
Petition for grant of letters patent . . .	5	0	0
Certificate of record of notice to proceed . .	5	0	0
Warrant of law officer for letters patent . .	5	0	0
Sealing of letters patent	5	0	0
Specification	5	0	0
Letters patent, or a duplicate thereof, before the expiration of the third year	50	0	0
Letters patent, or a duplicate thereof, before the expiration of the seventh year . . .	100	0	0
Certificate of record of notice of objections .	2	0	0
Certificate of every search and inspection . .	0	1	0
Certificate of entry of assignment or license .	0	5	0
Certificate of assignment or license . . .	0	5	0
Application for disclaimer	5	0	0
Caveat against disclaimer	2	0	0
Office copies of documents, for every ninety words	0	0	2

But these stamp duties are not to do away with the necessity of paying to the law officers of the crown, in cases of opposition and disclaimer, and memoranda of alterations, such fees as may be appointed by the lord chancellor and master of the rolls, and of reasonable sums for office copies of documents.

The two main conditions of a legal patent are, *first*, that the thing in favour of which it is granted must be a new, useful, and original invention; *secondly*, the patentee must furnish so clear a specification of it, that the public may be able to have the benefit of it as fully and as cheaply as the patentee himself at the end of the term during which he is rewarded for his ingenuity by having the sole making of it. A failure in these points renders the grant of a patent void. Hence, if the description, plan or model of any new invention be so obscure as not to be intelligible, at least to those in the same trade or manufacture, the patent is illegal, and cannot be maintained. The specifications, under the hand and seal of the patentees, are preserved in an office for public inspection.

As in the case of inventions for improvements in *instruments or machines of war*, it may be important to the service that such

inventions should not be published, the 22 V. c. 13, provides that such inventions, and all letters patent obtained for them, may be assigned to the secretary for the war department, and the secretary to certify to commissioners of patents that such inventions be kept secret. Petition and specification of invention to be left with the clerk of patents, in a packet under seal of secretary of state. Secretary of state may at any time, by writing under his hand, waive the benefit of the act.

A patent may be granted for *an addition* to an old invention, *Hornblower* v. *Bolton*, 8 *T. R.* 5.

A patent cannot be granted for a philosophical *principle only*, neither practically organized, nor capable of being so; but a patent for a machine *improved* by a philosophical principle, though the machine existed before, is good, 8 *T. R.* 95; 2 *H. B.* 463.

A patent is void if granted for an article which has been publicly vended by the patentee, though only for four months before. So, too, if the patentee say that by one process he can produce three things, and fail in any one of them. Also, if the specification direct the same thing to be produced several different ways, or by several different ingredients, and any *one* of them fail, 1 *T. R.* 602. Lastly, a patent is void if it be for *several* distinct inventions, and any *one* of them fail of originality.

The right to a patent is not prejudiced by the exhibition of a new invention at an industrial or international exhibition (28 & 29 Vic. c. 3, and 33 & 34 Vic. c. 27). *See* last chapter, sec. 8.

CHAPTER XVIII.

Landlords, Tenants, and Lodgers.

LANDLORD is he of whom land or tenements are taken.

Tenant signifies one that holds or possesses land or tenements by any kind of right, either in fee for life, for years, or at will.

A *lodger* is one who occupies an apartment hired in the house of another.

Net rent is a sum to be paid to the landlord, clear of all deductions for rates or taxes.

Tenure is the terms or conditions according to which lands, tenements, or lodgings are holden.

The law between householders and lodgers is, in almost every respect, the same as between landlords and tenants; all, therefore, that will be subsequently stated, relative to fixtures, notice, and payment of rent, applies equally to both descriptions of tenure.

I. LEASES.

A *lease* is a conveyance, in consideration of rent or other recom-

pense, for a specific period, of certain rights or interests in a possession, from the *lessor*, the person granting the lease, to the *lessee*, or person to whom the lease is granted.

By the common law, all persons may grant leases for any term *less* than their own respective interests. To grant leases for the *whole term* would be more properly an assignment than a lease.

A tenant in tail may make leases to endure for twenty-one years, or three lives, to bind his issue in tail, but not those in remainder or reversion. Also husbands seised in right of their wives, may make leases for the same period, provided the wife join in them.

A lease may bear date as far back as the parties please, but not on a day *subsequent* to its execution. If not exceeding three years from the time of making, and the reserved rent amounts to two-thirds of the improved value, a lease may be granted by parol or word of mouth; but all other leases must be in *writing*, and so must an *agreement* for a lease, however short the term. It must be read by or to the parties, if required; it must be signed and sealed by them, or their agents properly authorized, and must be delivered either by the lessor or his attorney, in the presence of one or two witnesses. It takes effect from the day of delivery, not from the date, *Steele* v. *Mant*, 4 *B. & C.* 272.

By the 8 & 9 V. c. 106, leases required by law to be in writing, are made void at law, unless made by deed.

A lease generally contains *covenants*, or mutual stipulations by the landlord and tenant; on the part of the landlord usually only one direct covenant, namely, for the quiet enjoyment of his premises by the lessee; on the part of the tenant, the covenants in ordinary leases are, to pay rent and taxes; to repair; against carrying on *offensive* trades; and to insure; with a proviso for re-entry in case of non-performance of any of these stipulations.

In *husbandry leases* a covenant is always implied, though not expressed, on the part of the tenant, that he will use the land demised to him in a husband-like manner, and not unnecessarily exhaust the soil by neglectful or improper tillage; but in such leases it is more usual to insert a special covenant as to the mode of cultivation.

If a lessee do not deliver up possession at the expiration of the lease, he is of course liable to rent; and if he be allowed to retain possession without any new contract, he is deemed a tenant by sufferance, at the same rent as he had been previously paying; and on the landlord's acceptance of any sum for rent accruing after the termination of the lease, the tenant may hold the premises from year to year, till half a year's notice has been given him.

A lessee can assign the whole of his interest, and the assignee is liable for the breach of the covenants broken during the assignment, but the original lessee or the assignee may assign over to a pauper, and so may get rid of his continuing liability under such covenants, but the original lessee will continue liable on a covenant

for indemnity. There is neither privity of estate nor privity of contract between the original lessor and the person to whom the lessee may give a part of his whole interest under the original lease. This person is generally called an undertenant. The original lessee and the undertenant cannot take advantage against each other of the covenants which exist between the original lessor and lessee. The lessee, if he underlets, must get the undertenant to remove at the expiration of the original lease, when he is bound to deliver up the premises to the lessor.

Lastly, leases may be *forfeited*. 1. By alienation, or when the tenant grants to another a greater estate in the premises than he has himself. 2. If the lessee commit felony, or any act that, in a court of record, amounts to a forfeiture of his estate. 3. By waste, as pulling down houses, suffering buildings to decay for want of necessary repairs, tearing up floors or doors, or destroying the timber, rabbits in a warren, fish, &c. 4. By the tenant ceasing to reside on the premises. 5. By non-payment of rent. In all these cases of forfeiture, the landlord has a power of re-entry, and that in many instances, as we shall hereafter explain, by a very summary procedure.

Under the 8 & 9 V. c. 124, abbreviated forms of leases have been given, which are required to be taxed, not according to their *length*, but the skill, labour, and responsibility involved in their preparation.

Leases in general require either an *ad valorem* stamp or the common deed stamp, without which the instrument cannot be given in evidence.

II. FIXTURES, REPAIRS, RENT, AND TAXES.

Whatever is fixed to the soil, or out-house, or farm-yard wall, so as to become a part thereof, cannot be removed, and will, at the expiration of the lease, belong to the lessor; but a tenant may remove what he has placed for the convenience of his *trade*, as engines, counters, brewing vessels, &c., provided he does it during the continuance of his term, and has not expressly covenanted to the contrary. Erections for the purpose of farming and agriculture do not come under the exceptions with respect to *trade*, and cannot be taken down again; but a nurseryman is allowed to remove his greenhouses (*Wyndham* v. *Way*, 4 Taunton 346), and also his small trees and shrubs. Wainscot, doors, floors, and other things, fixed with *nails*, cannot be removed; but chimney-pieces, pier-glasses, cupboards fixed with hold-fasts, book-cases, planned and fitted, and wainscot put up with *screws*, may be removed, so that the removal does not cause serious damage to the premises. All fixtures put up by the tenant must be removed *during his term*; otherwise, at the expiration of the term they become the landlord's property, *Lyde* v. *Russell*, 1 *B.* & *Adol.* 394.

Upon the characteristics of the fixtures, or goods and chattels which are moveable or not, Mr. Commissioner Fonblanque lately came to the following conclusions in the case of a bankrupt:—Firstly, that such articles as merely rest upon the soil by their own weight, however heavy, were goods and chattels; secondly, that if they were slightly connected with one another, and ultimately with the freehold, yet might be severed without material injury to the freehold, they followed the same rule; thirdly, that articles, though themselves fixed to the freehold by bolts and screws, or nails or pegs, or other similar contrivances, were also goods and chattels; fourthly, that articles mainly sunk in the soil, or built on it, were of the realty, and did not pass to the assignees.

In *Dumergin* v. *Rumsey*, it was held (Court of Exchequer Chamber, Feb. 20, 1864), that tenants' fixtures are not chattels till severed; and it is competent to a landlord to make an agreement with his tenant which shall, notwithstanding an abandonment by the tenant of his property in such fixtures during the term, in the event of an execution against the tenant, enable the landlord to re-enter and retain such fixtures against the execution creditor.

An outgoing tenant should be careful not to leave any ground for an action for *dilapidations;* otherwise a litigious landlord may drag him into an expensive lawsuit, which he has no power to stop or avert. No outlay or improvements made by the tenant during his occupancy will be allowed to set off the landlord's claim; and any amount of damages obtained will carry costs, *Cooke* v. *Anderson*.

Without an express covenant to the contrary, the tenant is bound to continue the payment of his RENT, though his premises may be destroyed by fire, and the landlord refuse to rebuild them. But a tenant is not to repair damages by tempest, lightning, or other natural casualty, unless there is a special agreement to that effect between him and the landlord. If a tenant covenant to repair generally, without an express exception, and the premises are burnt down, he is bound to rebuild them, 6 *T. R.* 650.

When a lessor covenants to repair, and neglects to do so, the lessee may repair, and deduct the expense out of the rent.

The land tax and ground rent are taxes chargeable to the landlord. In the absence of any special stipulation to the contrary, a sewers rate for extraordinary repairs falls upon the landlord, but a rate for ordinary annual repairs falls on the tenant, and, if necessary, the commissioners of sewers will, on appeal to them, decide by whom and in what proportion any particular rate shall be borne.

The occupants of houses are required to pay all levies rated on the premises, and to deduct so much out of the rent as the landlord ought to have paid. But if the rates payable by the landlord

are not deducted from the rent of the *current year*, they cannot be deducted, or the amount recovered of the landlord, in any subsequent year. Even if the tenant expressly covenant to pay the rent reserved, "without any deduction whatever," still it has been decided he may deduct the land tax and ground rent. The 3 & 4 W. 4, c. 22, s. 28, enacts, that the outgoing and incoming tenants shall apportion the sewers rate, but that no outgoing tenant shall claim a larger amount than has been actually paid by him and not allowed by his landlord.

The assessed taxes, poor rates, highway, watch, and lamp rates, are the tenant's own taxes, which he is bound to pay under the penalty of having his goods distrained. Most of the water and lighting companies have also, in addition to the power of cutting off the supply of water or light, authority to distrain for rates in arrear, in the same manner as landlords for their rent.

Rent is demandable and payable any time between sunrise and sunset. The demand must be made by the landlord, or some person authorised by him.

If a landlord in the *middle* of a quarter accept the key of a house, and take possession, he cannot afterwards recover from the tenant for use and occupation, *5 Taunt*, 518.

In the absence of an express stipulation in writing the tenant cannot set off any debt due to him by the landlord, and deduct it from the rent. But the occupier or sub-tenant may deduct the ground rent, if he has paid it, from the first payment of rent due from him, *5 Bing.* 409.

III. NOTICE TO QUIT.

Notice, or warning, is necessary where no *certain* time is fixed as the duration of the tenant's term; but when the tenant holds for a *certain* term no notice is requisite, but he quits on the expiration of his lease, 1 *T. R.* 54.

All demises, where no certain term is mentioned, are held to be tenancies from year to year, which neither party can determine without *half a year's notice*. If, therefore, a man once takes possession of a house, he is bound to retain it for a twelvemonth; and though he may let it to another tenant before that time, the landlord, unless he accept the other tenant, may still look to him for the rent.

The half-year's notice to quit should be given so as to expire on the *same quarter day* as that on which the tenant took possession. So if a person commence holding at Christmas, and wish to leave on the end of the first year, the notice must be served on or before Midsummer day; if a single day beyond Midsummer be suffered to elapse without the notice being given, the tenant may be compelled to hold the house for *two years*, there being no intermediate quarter-day till the following Midsummer on which he

can give notice, so as to leave on the quarter-day on which he entered.

In London, a tenant for *less* rent than 40s. must have a quarter's warning: above that sum, half a year.

When the tenancy is for a less period than a year, the notice depends on the letting: thus, if taken by the quarter, a quarter's warning: if monthly, a month's warning; and weekly, a week's warning.

Weekly rent is payable weekly; but if the parties let it run to a quarter, and it is then paid as a *quarter's rent*, it seems the tenure will become a quarterly tenure.

There is no distinction between houses and land, as to the period of notice to quit, 1 *T. R.* 162.

Notice by word of mouth is sufficient, if it can be proved to have been given, and was explicit, at the time of quitting, and absolute and explicit in its requisition to quit.

A parol notice on a parol lease will suffice.

When a house or apartments are taken for a *definite* period, as a week or a month, no notice is necessary, it being understood the parties are to quit at the expiration of that time.

Notice to quit should be served on the party himself for whom it is intended, or else left with his wife or servant, at the usual place of abode.

When notice is given improperly on either side, as a quarter where a half-year is necessary, or up to a wrong time, such improper notice should be objected to as soon as possible. If objection be made to a notice, though wrongful, within a reasonable time, such notice may constructively be deemed binding on the party accepting it.

Non-compliance with a notice *in writing* subjects the tenant to an action of ejectment, or to the payment of double rent, to be recovered by an action of debt, if the notice were given by the landlord, or by distress if given by the tenant, and where the rent claimed for such double rent does not exceed £50 an action may be brought to recover it, as double value for use and occupation in the county courts. Notice to quit may be waived, or tacitly withdrawn, by any act or conduct implying a permission on the part of the landlord, and an acquiescence on the part of the tenant, that the tenure shall continue as before. Thus, the receipt of rent for the premises up to a period subsequent to the expiration of the notice will be deemed a waiver, unless it appears to have been accepted merely as a satisfaction for the tenant's subsequent occupation of the premises.

The following is the usual form of notice from a landlord to tenant:—

Sir.—I hereby give you notice to quit, on or before Christmas next, [*or any other* period or day of *the month, according*

tenure] the house and garden [*or apartment, as the case may be*] you hold of me, at rent of £10 per annum. Dated 21st day of May, 1827.

Yours, &c.,

Abraham Newland.

To Mr. George Scott,
Sidney Street.

Landlord of the said house and garden, or apartment.

The form of notice from a tenant to a landlord is precisely in the same style and import.

IV. RECOVERY OF RENT OR POSSESSION.

For the non-payment of rent on the day it is due, the law has furnished landlords with several methods of recovering it; the chief of which are: 1. By action of law. 2. By ejectment. 3. By distress on the premises. The last is most commonly resorted to, and that of which we shall speak.

Distress is a remedy given by the legislature to a landlord, by which he is empowered to seize the goods of his tenant on the premises; to sell the same within a certain period, and thus to reimburse himself for the rent in arrear and the charges consequent on the distress.

Executors may distrain on behalf of the testator before or after probate. A husband may distrain, during his wife's life for arrears of rent of his wife's lands or houses which accrued either before or during the continuance of marriage, and after her death for rent which accrued during the marriage.

In general, all chattels found on the premises, whether the property of a tenant or a stranger, may be distrained. But dogs, rabbits, poultry, fish, or things of a wild nature; things on the premises in the way of trade, as horses in a smith's shop, corn at a mill, or cloth and garment's at a tailor's shop; the cattle and goods of a temporary guest at an inn (but not carriages or horses at a livery); the tools and implements of a man's trade, *in actual use;* the books of a scholar, or the axe of a carpenter; wearing apparel when upon the back; a beast at the plough, or the horse a man is riding upon; a watch in a man's pocket; pawnbrokers' duplicates, deeds, writings, or anything unsaleable; also loose money; none of these things can be taken by distress. Goods in the hands of a carrier or an auctioneer, to be sold by him on his premises (1 *Cr.* & *M.* 380), or of a principal in the hands of a factor, are privileged from distress: as also those consigned to a wharfinger for sale.

To these heads of things not distrainable may be added all goods in the custody of the law, whether as being already distrained or taken in execution. But in the last case so long as they remain on the premises, the landlord has a beneficial lien on them.

Nothing can be distrained which cannot be returned in as good a state as when taken; as milk, fruit, and the like.

In 1871 it was enacted by 34 & 35 V. c. 79, that if any superior landlord shall levy a distress on any furniture, goods, or chattels of any lodger for arrears of rent due to such superior landlord by his immediate tenant, such lodger may serve such superior landlord, or the bailiff, or other person employed by him to levy such distress, with a declaration in writing made by such lodger, setting forth that such immediate tenant has no right of property or beneficial interest in the furniture, goods, or chattels so distrained or threatened to be distrained upon, and that such furniture, goods, or chattels are the property or in the lawful possession of such lodger; and also setting forth whether any and what rent is due, and for what period, from such lodger to his immediate landlord; and such lodger may pay to the superior landlord, or to the bailiff or other person employed by him as aforesaid, the rent, if any, so due as last aforesaid, or so much thereof as shall be sufficient to discharge the claim of such superior landlord. Inventory of furniture, &c., to be annexed to declaration. If landlord, after this, proceeds with distress, his distress will be illegal, and furniture, &c., may be recovered on application to magistrates, and landlord will be liable to action at law by the lodger.

Distress must be proportioned to the sum distrained for. If a man take unreasonable distress, as two oxen for twelvepence, he may be heavily fined.

Distresses must be had in the *day time*, and not till the day *after* the rent is due. If made after the tender of arrears it will be illegal; and though the tender be made after the distress, but before it is *impounded*, the landlord must deliver up the distress, and the expenses, if any, must be paid by him.

By 11 G. 2, c. 19, goods *fraudulently* or *clandestinely* conveyed off the premises, to avoid a distress for arrears of rent, may be seized anywhere within thirty days after, unless *bonâ fide* sold to those not privy to the evasion. Every person *assisting* in such removal or concealment forfeits double the value of the goods, to be recovered by action of debt. If the value of the goods be under £50, two justices, on application from the landlord, and proof of the fraudulent conveyance, may order the parties to pay double the value of the goods, or, in default, be committed to hard labour for six months.

By the seventh section, landlords, with the assistance of a constable, may break open a dwelling-house, oath being first made before a justice of reasonable ground to suspect that goods are concealed there.

It is material to observe, that the remedies under this statute for goods clandestinely or fraudulently conveyed away to avoid distress, extends only to the tenant's *own goods*, and not to those

of a *lodger* or *stranger*, 5 *M.* & *S.* 38. It is even considered a creditor, with the consent of his debtor, may take possession of the goods of the latter for a *bonâ fide* debt, and remove them from the premises, if apprehensive of a distress, without being liable to the penalties of the act. It is also important to remark that the statute applies only when the rent is *actually due:* for the tenant may remove his goods any time previously to the rent-day, and they cannot be followed under the provisions of this act; the rent when due would be a debt from the tenant to the landlord, on simple contract only, to be recovered, like similar debts, by action in a court of law. Further, it is essential to observe, that the presence of a constable is necessary whenever *force* is resorted to by a landlord following goods fraudulently removed; and a plea in *Rich* v. *Woolley* was held bad for not stating such presence.

As regards the liability of persons for *assisting* to remove goods to prevent the landlord from distraining, strict proof is required of being privy to the fraudulent intent of the tenant. Proof of the mere act of assistance is not sufficient, *Brooke* v. *Noakes*, 8 *B.* & *C.* 537.

The place where the distress is deposited in security, or, as it is termed *impounded*, may be on such part of the premises as is most convenient. But if the goods distrained are removed, notice must be given of the place where, and such notice contain an inventory of the goods distrained.

The law has provided *summary methods* for recovering possession of land and tenements, under different circumstances. Where a tenant at rack-rent, or at full three-fourths of the yearly value, deserts his premises, being a half a year's rent in arrear, without leaving sufficient distress, and though a man is in possession, two justices may, after fourteen days' notice publicly affixed on the premises, put the landlord in possession, and the lease, if any, is afterwards void, 57 G. 3, c. 52. In the metropolis two justices need not be present, two police constables will suffice, 3 & 4 V. c. 84.

By 1 & 2 V. c. 74, when premises are held at will or for less than seven years, and possession is legally determined, and there is no rent, or the rent is under £20, a constable may give possession after notice and application to a magistrate.

By 2 & 3 V. cc. 47 & 67, any constable of the metropolitan police force may stop and detain, until inquiry has been made, all carts and carriages employed in removing the furniture of any house or lodging between the hours of eight in the evening and six in the morning, or whenever the constable has good grounds for believing that such removal is made for the purpose of evading the payment of rent.

The possession of real property for 20 years without acknowledgment of any previous ownership, gives an absolute

title to the property against all claimants except again who might have been infants at the time possession wa and the time will not begin to run against them till th obtained their majority.

By Common Law Procedure Act, the 15 & 16 V. c. 76 procedure in ejectment is abolished, and ejectment to be by writ directed to the persons to be ejected by name all persons entitled to defend the possession of the claimed, which property shall be described in the writ with able certainty. By consent and by leave of the judge, case may be stated, according to the practice heretofor if not, the claimant may proceed to action in the same as in other actions, ss. 168–179.

In the case of landlord and tenant, where half a year in arrear, and the landlord or lessor has a right to re- non-payment, he may bring writ of ejectment; and on pr there was not sufficient goods to satisfy distress, he shal judgment and execution; but on the tenant paying and costs before trial, the proceedings are to cease. T lord's former remedies, however, are saved. In ej by mortgage, the mortgagor's rendering the principal and in court shall be deemed a full satisfaction, and the co compel the mortgagee to recover; but this is not to to cases where the right of redemption is controverted money due is not adjusted, ss. 210–219.

The landlord may proceed by plaint in the county recover the rent of his premises, where such rent does no £50 per annum. If the rent be six months in arrear the may, if he has right to re-enter under the lease, enter a the county courts in order to recover possession of his pre

By 33 & 34 V. c 35, ss. 1, 2, and 5, all rents a or periodical payments in lieu of rent or tithe, are, 1st of August, 1870, to be considered as accruing f to day, and are to be apportionable in respect of time acc the apportioned part is to become payable when the which it formed part shall next become payable, and not

V. REPLEVY AND SALE.

A *replevy* is an action to try the legality of the and meanwhile recover back the goods distrained. A remedy which may involve the tenant in an expensive tracted lawsuit, it ought to be very cautiously attempted.

If a person is determined to replevy, he must, within after the notice given him of the distress, go with tw keepers to the sheriff's office, or to a person authorize sheriff to grant replevies, and enter into a bond, with tw

is double the value of the goods, to try without delay the right of distraining, and to return the distress in case the right should be determined against him; upon which the sheriff shall direct a precept to one of his bailiffs to restore the goods to tenant.

On the *sixth* day after the distress, if the goods are not replevied, nor farther time allowed by the landlord, at the *request of the tenant*, the goods must be appraised by two sworn appraisers, and sold for the best price that can be got for them; and after deducting the cost of the distress, appraisement, and sale, leave the surplus, if any, to the owner.

If a sufficient amount is not raised by the first distress, a second distress may issue.

To prevent extortion in distresses for small rents, it is enacted by 57 G. 3, c 93, that no broker, in levying a distress *under* £20, shall take more than the following sums, on a penalty of treble the amount of the moneys so unlawfully taken:—

	s.	d.
For levying the distress . . .	3	0
Man in possession per day . . .	2	6
Appraisement, whether by one broker or more, in the pound . . .	0	6

Stamps, the lawful amount thereof. All expense of advertisement, if any such, 10s. Catalogues, sale, commission, and delivery of goods, one shilling in the pound on the net produce of the sale. And the broker is required to give a copy of his charges to the person distrained upon. The provisions of this act are extended, by 7 & 8 G. 4, c 17, to any distress for land tax, assessed taxes, poor rates, church rates, tithes, highway and sewer rates, or any other rates, assessments, or impositions whatever, where the sum demanded is under £20.

By 32 & 33 V. c. 71 s. 34 (the Bankruptcy Act, 1869), the landlord, or other person to whom any rent is due from a bankrupt, may, at any time either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy, it shall be available only for one year's rent, accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt, may prove under the bankruptcy for the overplus due for which the distress may not have been available.

By the 7 Anne, c. 12, the goods of ambassadors and their domestics are protected from distress; but this privilege does not extend to articles of luxury.

It seems that a tenant who holds over after the expiration of his tenancy, cannot maintain an action of trespass against his landlord, who *forcibly* enters; but if the force employed amount to a

ach of the peace, the landlord is criminally liable, 1 *Pr*

The landlord's lien for rent on limited tenures is restrained & 8 V. c. 96, s. 67, enacting that "no landlord of any te nent let at a weekly rent shall have any claim or lien upon goods taken in execution, under the process of any court of l for more than *four weeks' arrears* of rent; and if such tenem shall be let for any other term less than a year, the landlord sl not have any claim or lien on such goods for more than the arre of rent accruing during four such terms or times of payment.

EMBLEMENTS AND FIXTURES.—To lessen the evils of the ri to emblements, and of the law relating to growing crops sei under execution, and to agricultural fixtures, the 14 & 15 V. c. provides that when, on determination of leases or tenancies by death or cesor of interest of landlord entitled for life or any ot uncertain interest, instead of emblements, the tenant shall conti to hold until the expiration of the current year, and shall t quit upon the terms of his lease or holding; and the succeed landlord or owner shall be entitled to recover a fair proportion the rent that had accrued from the death of his predeces Growing crops seized and sold under execution to be liable accruing rent. Tenant may remove buildings and fixtures ere by him on farms, unless landlord elect to take them. Te quitting, leaving tithe rent-charge unpaid, landlord or new te may pay the same. and recover from the late occupier, as simple contract debt.

VI. PROCEEDINGS AGAINST LODGERS.

It seems that if householders who let lodgings or apar with attendance, do not keep them in such state of cleanli to be comfortably or wholesomely inhabitable, lodgers ma them without notice or liability for rent. For instance, be found in a bed, even after entering into possession, a not obliged to stay in a house, 12 *M.* & *W.* 52.

A housekeeper has the same power to distrain the goc lodger for rent, as a landlord has over those of his tenar may detain the property of his lodger, while on the pre rent *in arrear*.

If the housekeeper wish to get rid of his lodger, and in stopping, even after his goods have been taken to the the rent due, the best course to adopt is to serve a wri by a person who may be brought as a witness, setting the lodger does not quit at the expiration of the term the housekeeper will demand an advance of double r not paid, he shall, in his absence from his apartme out of the house.

If this does not succeed, and the party will nei double rent, recourse must be had to the foll

After the period mentioned in the notice has expired, the housekeeper may enter the lodger's apartments, whenever he finds them open (for he must not use *force* to open them); he may then take out the window sashes, remove any of his *own* fixtures or furniture, take the door off the hinges, the lock or fastening off the door, block up the chimney, or do any other act which makes the place comfortless and untenantable.

If a lodger absent himself, leaving his apartments locked, and *in arrear for rent*, the most legal way to recover possession to send for a constable, and in his presence to enter the apartments, and take out the lodger's property, and secure it till a request be made for it. The housekeeper may then take possession of the apartments, and relet them if he thinks fit; and if after giving fourteen days' notice in the *Gazette*, the lodger does not return to claim his property and pay his arrears, the housekeeper may sell the property advertised for the payment of the rent due at the time of taking possession, and the expenses incurred, reserving the goods it was unnecessary to sell, or the surplus money (if any), for delivery to the lodger. Or 1 & 2 V. c. 74 (p. 277), would probably in many cases give a prompt remedy against intractable inmates.

Any tenant or lodger stealing a chattel or fixture let to hire with the house or lodging, is, by 24 & 25 V. c. 96, s. 74, guilty of felony, and can be punished accordingly, and tenants of houses, who maliciously injure them, are by 24 & 25 V. c. 97, s. 13, guilty of a misdemeanour.

VII. GENERAL REMARKS.

The law allows a landlord to enter a house to view repairs, but if he enter *forcibly* he is a trespasser.

Rent tendered in a lump is a valid tender, it being the receiver's business to count it out and see that it is right.

No goods taken in execution can be removed till the landlord's rent is paid, provided it be *demanded*, and amount to no more than a *year's rent*.

A person who takes lodgings has the right, in the absence of stipulations to the contrary, to the use of the door-bell, knocker, staircase and skylight to it, and of the water-closet, but his remedy is by action at law for breach of contract, and not by setting off or refusing to pay any part of his rent.

In taking a house it is proper a person should carefully examine the covenants in the lease, and those in the under-lease, if any, or he may possibly discover, when too late, that he is tied down by such restrictions as to render the house unfit for his purpose, or likely to involve him in unforeseen difficulties. He should take care that all arrears of rent, the ground-rent, and all taxes, are paid up to the time he takes possession; for, if they are not, he

must pay all arrears, and can only recover them by having recourse to the last tenant.

In purchasing a lease of a tenant, care should be taken, by examining the lease and inventory, that fixtures, and other things belonging to the landlord, are not paid for as belonging to the tenant.

A practice, which it is necessary to guard against, has become prevalent, to insert words in leases sufficiently comprehensive to include *trade fixtures*, and such as the law itself, without the lease, would consider the tenant's.

A person taking a house on a *repairing lease*, and undertaking to keep it in repair, and leave it in as good condition as when he entered it, is bound to rebuild or repair it, in case it be destroyed by fire, lightning, tempest, or other accident.

A person taking a lease ought to obtain a copy of it before it is engrossed on stamps, and carefully consider the terms it embraces.

Regard ought also to be had to the *locality* of a dwelling, whether there are symptoms of damp, as indicated by the paper peeling off, or the walls being discoloured; whether the chimneys are smoky, which may be known by signs about the fire-place, or the smoky appearance of the ceiling; whether it is subject to unpleasant smells from drains, cesspools, &c.; whether there are any nuisances or annoying trades in the neighbourhood, from tallow-melters, soap-boilers, and the noise of steam-engines and manufactories.

Every lodger should examine the condition of the apartments he takes, with the number of panes of glass cracked or broken, or other things defaced or damaged; for, on quitting the lodging, the landlord is likely to demand satisfaction for what was destroyed before his entrance.

If the premises are burnt down, the tenant should, if he has the power, give notice in writing of his intention to quit, in order that he may cease as soon as possible to be liable to pay the rent.

It has been decided that a landlord is not liable, as in the case of an innkeeper, for any goods or property lost or stolen from the apartments of his lodger.—*Common Pleas, Easter Term*, 1860.

As it is not the policy of the law to encourage *immorality*, a landlord cannot recover for board and lodging furnished to a woman of the town, if he is aware at the time that such is her mode of life, 1 *Car & Pay.* 347: *T. T.* 1826.

Lastly, within the limits of the metropolitan police, the magistrates have summary power to order compensation, not exceeding £15, for any *wilful* or *malicious damage* committed by tenants in any house or lodging, or to the furniture, on complaint made within one calendar month. They may also deal summarily with cases of *oppressive distress* by landlords, where the house or lodging, by the week or month, does not exceed the rate of £15 a year, 2 & 3 V. c. 71, ss. 38, 39.

CHAPTER XIX.

ikeepers, Licensed Victuallers, Beer Retailers, and Theatres.

I. INNKEEPERS.

inn, as distinguished from a common alehouse or beerhouse, s described as a house of public entertainment, where pro- and beds are furnished for persons who apply for them; gh it is called an hotel, tavern, or coffee-house, and it is not nted by stage-coaches or waggons, and has no stable attached yet furnishing the accommodation of lodging and victuals, it within the legal description of an inn, and is subject to the iabilities, *Thompson* v. *Lacey*, 3 *B. & A.* 283.

innkeeper is bound to receive all guests or travellers, and to e them with necessary food and lodging, or to dress any vic- which they may require, unless he can show a reasonable ex- for his refusal, such as his house is already full, or the but he is not obliged to allow his guests a particular room. s no option either to receive or reject guests, and as he can- fuse to receive guests, so neither can he impose unreasonable on them.

an innkeeper refuse to entertain a guest on tendering him sonable price, not only may his house be suppressed, but es obtained by action, and he may be indicted and fined at the the crown. It is said that he may be compelled, by the ble of the town or justice of the peace, to receive and enter- ich person as a guest; and this, whether he has a sign before or or not, if he make it his general business to entertain tra- , 1 *Hawk*, c. 78. He may also be compelled to receive a though the owner does not lodge in the house; but it has uled that an innkeeper is not bound to furnish travellers with horses, though he has a license, and has horses at liberty in able.

the court of Common Pleas, November 17, 1864, the im- it point was decided in relation to what is called the travel- question. Judgment had been decided against the appellant charge of selling liquor during the prohibited hours on Sun- Lord Chief Justice Erle, in substantially giving judgment e appellant against the local magistrates, gave a liberal retation to the word "traveller," holding that any person vent abroad for purposes of business or pleasure was entitled reshment. But it is necessary that the publican should have reason to believe that his customers are travellers; and magis-

trates must also take into account whether they have stopped longer than is necessary to obtain the required refreshment.

An innkeeper is bound to protect the property of his guests, and is accountable for all the goods placed within his house, whether delivered expressly into his keeping or not; it is sufficient, if they be at the inn, to charge him.

If a guest be robbed, he is bound to restitution, unless it appear the guest was robbed by his own servant or companion; and it is no plea for the innkeeper, that at the time the theft was committed he was sick or insane. Like a carrier, his liability can only be limited by express agreement or notice. Therefore, where a package, part of a traveller's luggage, was placed by his desire in the commercial room of an inn, from which it was stolen, the innkeeper was held liable, though it was proved to be the custom of the house to deposit all luggage in the bed-rooms of guests, *Richmond* v. *Smith*, 8 *B.* & *C.* 9.

But an innkeeper is bound to answer only for those things which are *within* his house. If therefore, he refuse, because his house is full, to receive a person, who thereupon says he will shift, and then is robbed, the innkeeper is not liable. Nor is any innkeeper in any case liable for goods, unless the owner be a *guest*, that is, a traveller or passenger at the inn.

A man by putting up a horse, though he never enter the inn himself, becomes thereby a guest. If one contract for lodging for a set time, and do not eat or drink there, he is no guest, but a lodger, and so not under the innkeeper's protection; but if he eat, drink, or pay for his diet, it is otherwise.

In many inns and hotels, it is a common practice for the innkeeper to pay the laundresses' and other persons' bills on behalf of their guests, as a matter of course; but by *ordinarily* discharging such bills, innkeepers render themselves liable for the payment of any undischarged bills of the same kind, *Stark. Rep.* 171.

The Reckoning.—An innkeeper may detain the horse which eats, till payment. But a horse committed to an innkeeper may be detained only for his own meat, and not for the meat of his guest, or of any other horse.

A livery-stable keeper cannot detain a horse for his keep, except by special agreement; his remedy is by action against the owner.

By 24 G. 2, c. 40, which was intended to discourage tippling, by limiting petty credit to the poorer classes, an innkeeper cannot recover any debt or demand for spirituous liquors, unless of the amount of 20*s.* or upwards, and contracted for at one time.

This act was partly repealed in 1862, by 25 & 26 V. c. 38, but so far only as relates to spirituous liquors sold to be consumed *elsewhere* than on the premises, where sold and delivered at the residence of the purchaser, in quantities not less at any one time than a reputed quart.

If several persons meet at an inn or tavern and dine there, without a special agreement with the inn or tavern keeper, each is liable for the whole expense of the dinner, unless previous notice had been given that they came by the invitation of others, in which case they are not liable for their own share, for the credit was given to the inviters. In the cases of a regimental mess and public dinner, each person is liable for his own share, for their manner of dining is notice to him who provides the dinner.

If an innkeeper refuse to give in the reckoning in *writing*, or otherwise, specifying the number of quarts or pints, or sells in other than standard measure, he cannot, on default of payment of such reckoning, detain any goods or things belonging to the person from whom such reckoning is due.

Contrary to the dictum of Judge Eyres, it has been lately decided that an innkeeper cannot detain the *person* of his guest or take off his clothes, in order to secure the payment of his bill, *Sunbolf* v. *Alford*, 3 *M.* & *W.* 248.

An innkeeper may detain, for his keep, a horse left with him to be kept, though the person who left him had no right to him, and though such person did not stay in the inn.

A horse taken away before the reckoning is discharged may be pursued and brought back.

An innkeeper has no right, by general custom, to use a horse detained for his meat, nor to sell him. But, by the special custom of London and Exeter, he may take a horse, who has eaten out his price, to his own use, on the appraisement of four neighbours.

Act of 1863.—To fix more precisely the onerous liabilities of an innkeeper, the 26 & 27 V. c. 41, provides that no innkeeper shall be liable for any loss or injury to property brought to his inn, not being a horse or other live animal, or any gear pertaining thereto, or any carriage, beyond £30, except such property be lost or injured through *wilful neglect* of innkeeper or his servant, or except such has been deposited *expressly* for safe custody with innkeeper. In case of *express deposit*, innkeeper may require, as a condition of liability, that the property be deposited in a box or other receptacle fastened and sealed by the depositor. Innkeeper bound, as mentioned, to receive property of guests for safe custody. First section of the act to be printed in plain type and conspicuously exhibited in the hall or entrance to the inn, and innkeepers only entitled to the benefit of the act in respect of property while such notice is exhibited, s. 3. The word "inn" interpreted to mean any hotel, inn, tavern, public-house, or other place of refreshment, the keeper of which is now by law responsible for the property of his guests.

Billeting of Soldiers.—By the Annual Mutiny Act, all keepers of inns, livery-stables, alehouses, victualling-houses, wine-sellers by retail, and dram-sellers, are obliged to receive all officers and sol-

diers quartered, or billeted, upon them. But persons having more billeted in proportion than their neighbours, may be relieved, by complaint to a justice. Persons holding canteens, distillers, shopkeepers whose principal dealing is not in spirits, keepers of taverns only, being free of the Vintners' Company in London, are exempt from receiving the military, 5. W 4, c. 6.

Innkeepers refusing to accommodate the military, as provided by the act, may be fined, not above £5, nor less than 40s. Officers quartering the wives, children, or servants of any of the military, without consent of the owner, may be fined 20s. Where any horse or dragoon is quartered on a person having no stable, he may be relieved on complaint to a magistrate, and the payment of a composition.

Soldiers while on the *march* may require the parties on whom they are quartered to furnish one hot meal per day, consisting of not exceeding one pound and a quarter of meat, previous to being dressed, one pound of bread, one pound of vegetables, two pints of small beer, vinegar, and salt, for which they shall charge 10*d*. The allowance for hay and straw per day, for one horse quartered, is 10*d*. Innkeepers giving soldiers on march money, in lieu of diet and small beer, may be fined from 40s. to £5. Innkeepers allowed to provide the military, when stationary, with fire, candles, vinegar, salt, and utensils to dress their victuals, on receiving for the same one halfpenny per diem. Every officer, on receiving the pay, or subsistence money, must give notice to the persons on whom the military are quartered, so that their claims may be liquidated.

II. LICENSED VICTUALLERS.

It will be seen from the last section that every alehouse is not an inn, nor every inn an alehouse; but if an alehouse lodges and entertains travellers it is also an inn; and if an inn uses the common selling of ale it is an alehouse. Having stated the liabilities of innkeepers, as established by the common law and legal decisions, we come to that numerous class of publicans or alehouse keepers, who are regulated by statute, and annually receive a license from justices of peace to retail beer to be drunk on the premises or elsewhere. They are distinguished from the *retailer* of beer, by their magistrates' license being compatible with a license to sell wines and spirits, which the license of the retailer, granted by the commissioners of excise, is not. In some parts of the country the magistrates have refused to license victuallers whose principle or sole occupation is the vending of *spirits*; and as they could not obtain a license from the excise to retail spirits without having first obtained the magistrates' license to sell beer, their business was destroyed. An appeal was made to

the quarter sessions, but the decision was confirmed. The reason assigned by the magistrates was, that the original intention of licensing places was to supply *victual and lodging* to travellers and strangers, and hence the law always recognised them as "victualling-houses," and that such places as "dram-shops" not coming under the design of the law, they were justified in thus refusing them licenses. That such power is vested in licensing magistrates there seems little doubt; and its existence shows the precarious tenure of good behaviour on which the prosperity of the "*gin palaces*" of the metropolis and elsewhere depends.

The Licensing Act, 1872 (35 & 36 V. c. 94), has altered greatly the law as to licensed victuallers. It will be necessary before considering this act to take notice of such parts of former acts relating to licensing as are still in force. The 9 G. 4, c. 61, provides that there shall be yearly held a special session of justices for the purpose of granting licenses; such meetings to be held in the counties of Middlesex and Surrey within the first ten days of the month of March, and in every other county on some day between the 20th of August and 14th of September.

Notice of General Meeting.—Within every division, twenty-one days before the annual licensing meeting, a petty session of justices to be held, a majority of whom shall fix the day and hour for holding the general annual meeting, and shall direct a precept to the high constable, requiring him, within five days after the receipt thereof, to order the petty constables to affix on the door of the church, chapel, or other public place in their districts, a notice of such annual meeting, and to give to or leave at the dwelling-house of each justice acting for the division, and of each person keeping an inn, or who shall have given notice of his intention to apply for a license to keep an inn, a copy of such notice, s. 2. The annual meeting may be adjourned; but the adjourned meeting is not to be held on any of the five days next following the adjournment; and every adjournment to be held in the month of March in Middlesex and Surrey, and in August or September in every other county, s. 3.

Transfer of Licenses.—At the annual meeting, justices to appoint not less than four, nor more than eight, special sessions, to be held as near as possible at equidistant periods, for the purpose of transferring licenses, s. 4. Notice of holding any adjourned annual meeting, or of any special session for the transfer of licenses, to be given in the same manner and to the same parties as mentioned in the second section, s. 5.

When, in any liberty, city, or town, two qualified justices do not attend, the county justices may act, s. 7. These powers given to the county justices not to extend to the Cinque Ports, s. 8. Questions respecting licenses to be determined, and licenses to be signed, by a majority of the justices at the meeting, s. 9.

Licenses to be in force in Middlesex and Surrey from the 5th of

April; elsewhere from the 10th of October, for one whole year, s. 13.

Provision for Death or other Contingency.—If any person licensed shall die, or become incapable, or a bankrupt, or insolvent, or if he or his heirs, executors, or assigns, shall remove, or neglect to apply for a continuance of his license; or if any inn shall be pulled down for any public improvement, or be rendered, by fire or other casualty, unfit for the reception of travellers; in these cases, the justices at special session may grant to the heirs, executors, or assigns, or to any new tenant, a license; or, if the house be pulled down or rendered unfit, a license to sell in some other convenient house may be granted; provided such license shall continue only in force to the end of the year; and in case of removal to another house, notice must be given on some Sunday within six weeks before the special session, such notice to be affixed on the door of such house, and on the door of the church or chapel of the parish, and, where there shall be no church or chapel, on some other conspicuous place within the parish, on three several Sundays between the 1st of January and the last day of February in the counties of Middlesex and Surrey, and elsewhere between the 1st of June and the last day of July, at some time between the hours of ten in the forenoon and four in the afternoon, and shall serve a copy of such notice upon one of the overseers of the poor, and upon one of the constables or peace officers of the parish, within the month of February in the counties of Middlesex and Surrey, and elsewhere within the month of July, prior to the annual meeting; such notice to be in a legible hand, or printed, and signed by the applicant, s. 14.

Fees for Licenses.—The clerk of the justices at any annual meeting or special session, may lawfully receive from every person to whom a license is granted, for trouble and *all expenses*, the following sums:—

	s.	*d.*
For constable or officer serving notices . .	1	0
For clerk of justices for license	5	0
For precept to the high constable and notices to be delivered by the petty constable . .	1	6

Clerks demanding or receiving more than these fees to forfeit £5, s. 15.

No sheriff's officer, or officer executing the process of any court of justice, qualified to hold or use any license under this act, s. 16.

Penalties against justices may be sued for in any court in Westminster; a moiety to the queen, and a moiety to the party suing, s. 24. Conviction to be on oath of one or more witnesses, s. 31.

Definitions.—The 37th and last section defines that the word "inn" shall include any inn, alehouse, or victualling-house; and

he words "inn, alehouse, or victualling-house," include all houses n which is sold, by retail, any excisable liquor, to be drunk or nsumed on the premises; and the words "excisable liquor" nclude any ale, beer, or other fermented malt liquor, sweets, ider, perry, wine, or other spirituous liquor, which is now r shall be hereafter charged with duty, either by customs or xcise.

Music and Dancing.—By 25 G. 2, c. 36, the keeping, within he cities of London and Westminster, and twenty miles thereof, without license from the quarter sessions, any house, garden, or place for *public dancing, music, or other public entertainment*, is prohibited under a penalty of £100 on the keeper, and the house to be deemed disorderly. Constables or other persons authorized by warrant, may enter such place, and seize any person found therein, with a view to their being dealt with according to law. Places licensed are directed to have an inscription over them, setting forth that they are licensed pursuant to the statute; but places licensed by the crown, or lord chamberlain, are excepted from the act. The magistrates of Middlesex, having been long divided in opinion on the interpretation of the acts referring to theatres and to licenses for music, dancing, and other entertainments, took the opinion of eminent counsel on the construction of the statutes. In consequence of the opinion given, the magistrates determined, at the sessions, Oct. 7, 1852, in future, not to insert in the licenses to be granted under 25 G. 2, c. 36, "the words 'or other public entertainments of the like kind,' but will in all cases specify the particular entertainment which may be given." A resolution was also made to alter the standing orders, in accordance with the new regulation; and that, in future, applicants give fifteen days' notice, instead of seven as heretofore, to the clerk of the peace, and to the clerks of petty sessions, of their intention to apply.

Persons licensed for the sale of wine, spirits, or beer, suffering *friendly societies or clubs* to meet in their houses, forfeit their licenses, under 57 G. 3, c. 19.

The granting of certificates to dealers in provisions in Scotland for the sale of excisable liquors, is regulated by 16 & 17 V.

Hotels and Spirit Shops.—The commissioners and officers of excise are prohibited from granting to the keepers of hotels and coffee-shops a license for the sale, by retail, of any *excisable liquor*, to be spent on the premises, unless the magistrates' license for the sale of beer has been previously obtained. All excise licenses granted contrary to this provision are void, and the parties obtaining, and retailing wines, spirits, or any excisable liquors, are liable to the penalties for selling without *license*, as was formerly the case of the hotel-keepers *of the metropolis*.

Hours and Closing Hours.—*Any victualler or keeper* of any

house, shop, room, or other place for the sale of liquors, whether spirituous or otherwise, knowingly harbouring or entertaining any constable belonging to the metropolitan police force during his hours of duty, is liable to a fine not exceeding £5, 10 G. 4, c. 44, s. 6. The license is also to become void on the holder being convicted of felony, or of selling wine or spirits without a license; and all persons so convicted are declared henceforward totally disqualified to hold a license under this act; and if a license is obtained surreptitiously, such license is void, and the person so possessing it is declared liable to all the penalties for retailing beer, &c., without a license.

Upon the death of a person licensed to sell beer, the widow, or child, or administrator may continue to sell until the expiration of the term of the license, on having the license endorsed as the commissioners of excise may direct.

Every person licensed to retail beer or cider is required to make entry with the excise.

By 23 V. c. 27, from July 1, 1860, all houses, rooms, shops, or buildings, kept open for public refreshment, resort, and entertainment, at any time between nine o'clock at night and five o'clock in the morning, not being licensed for the sale of beer, cider, wine, or spirits, are deemed refreshment-houses, and the resident, owner, tenant, or occupier, is required to take out a license. Persons keeping any such place for the purpose of selling any victuals or refreshment, to be consumed on the premises (except beer, cider, or wine sold under a license), or for consumption by the public of any refreshment, though not sold therein, may, if they think fit, take out a license.

If licensed to keep a refreshment-house, confectioners and eating-house keepers are entitled to take out license to sell foreign wine by retail, to be drunk on the premises.

For a license to keep a refreshment-house, if under £20 rental, 10*s.* 6*d.*; if above £20, 21*s.* For a license to retail foreign wine in such house or premises, to be drunk there, if under £50, three guineas, or above £50, five guineas. License to retail foreign wine *not* to be drunk in the house or shop, if under £50 rental, two guineas, or above £50 rental, five guineas.

Sale of wine by retail, if not to be consumed on the premises, to be in reputed quart or pint bottles only, s. 3. Every sale of foreign wine in any less quantity than two gallons, or one dozen reputed quart bottles, to be deemed a selling by retail.

Wine-licenses not to be granted to any house of less rent or value than £10; or, if in city, borough, town, or place, of population exceeding 10,000 by last census, not if the rent of the house is under £20. A sheriff's officer, or officer executing any legal process of any court of justice, disqualified to hold a license for wine to be drunk on the premises.

Penalty for keeping a refreshment-house without license &c.

s. 9. License to be granted by collector or supervisor of excise, or other person appointed by Inland Revenue Board. On the death of a licensed person, his representative, or widow, or child, may be authorized to continue the business for which the license was granted for the remainder of the term.

Penalty for selling wine by retail without license, £20; exclusive of excise penalty. License to be void on conviction of felony, or selling spirits without a license. Entry of houses, &c., to be made by licensed retailers, and excise officers empowered to enter premises, and make search for spirits, &c. Having spirits in entered premises, penalty £50, and loss of wine-license, s. 25.

The excise acts apply to this act by s. 2. It does not extend to Scotland or Ireland; but by a later act, the 23 & 24 V. c. 107, it is, with modifications, extended to the regulation of wine and refreshment-houses in Ireland.

By 32 & 33 V. c. 27 (amended by 33 & 34 V. c. 29), no license, or renewal of a license, for the sale of beer, cider, or wine, is to be granted after the 15th July, 1869, except upon the production of a certificate granted under the act, and certificates are to be granted at the annual general licensing meeting, to be held as already stated, in pursuance of the 9th G. 4, c. 61. Every person intending to apply to the justices for a certificate under the act is to give notice in writing, at least 21 days before he applies, of his intention to one of the overseers of the parish, township, or place, in which the house or shop in respect of which his application is to be made is situate, and to some constable or peace officer acting within such parish, township, or place, and in such notice is to set forth his name and address, and a description of the license for which he intends to apply, and of the situation of the house or shop. And in the case of a house or shop not already licensed for the sale by retail of beer, cider, or wine, such person is also, within the space of 28 days before such application is made, to cause a like notice to be affixed and maintained between the hours of 10 in the morning and 5 in the afternoon of two consecutive Sundays on the door of such house or shop, and on the principal door or on one of the doors of the church or chapel of the parish or place in which such house or shop is situate, or if there be no such church or chapel, on some other public and conspicuous place within such parish or place. Where application is made to the justices for a grant of the certificate under this act by way of renewal only, notice in pursuance of this section shall not be requisite. All the provisions of the said act of 9 G. 4, c. 61, to apply to the grant of a certificate under this act.

These acts do not affect the two universities, nor the privileges of the Vintners' Company (except as to persons who have obtained their freedom by redemption only), nor any law of excise; nor prohibit any person selling beer in booths in fairs, as before allowed.

III. THE LICENSING ACT, 1872.

This act, 35 & 36 V. c. 94, which does not extend to Scotland, was passed to amend the licensing acts.

Disqualification of Justices.—No justice is to act for any purpose under this act or any other licensing act (except where the offence charged is that of being found drunk, or being guilty while drunk of disorderly conduct, or being guilty of other offences of a like nature) who is, or is in partnership with or holds any share in any company which is, a common brewer, distiller, maker of malt for sale, or retailer of malt or of any intoxicating liquor in the licensing district, or in any district adjoining to that in which such justice usually acts; nor is any justice to act in respect of any premises in which he is interested. The penalty for any justice acting though disqualified to act as above, is a sum not exceeding £100, and no justice is to be disqualified in respect of any premises unless he has a beneficial interest in them or the profits of them; nor is any act done by any disqualified justice to be invalid.

Grant of Licenses.—No license granted at a general licensing meeting in respect of premises not theretofore licensed for the sale of intoxicating liquors is to be valid in counties unless it is confirmed by the county licensing committee, and in boroughs unless it is confirmed by the whole body of borough justices that before this act had passed would have been authorized to grant licenses, or by a majority of them present for the purpose of confirming such licenses. A county licensing committee is to consist of three, and not more than twelve, members appointed by the justices in quarter sessions from among themselves, and the justices may appoint more than one committee and assign to each committee such an area of jurisdiction as they may think expedient. Vacancies to be filled up by the justices in quarter sessions. Retiring members may be reappointed. The justices may make such regulations with respect to the meetings of the committee, and the transactions of business at them, as they may think fit. The clerk of the peace of the county, or his deputy, is to be the clerk of the county licensing committee, and is to perform all duties in relation to such committee as he is required by law to perform in relation to the justices in quarter sessions. In boroughs in which there are ten or more justices acting, new licenses are to be granted by a committee who, for the purpose of such new licenses, are to perform all the duties, and be subject to the obligations, of licensing justices. This committee is to be appointed from among the borough justices by themselves, and is to consist of not less than three, or more than seven in number. Beyond the limits of the jurisdiction of the metropolitan police courts, a metropolitan police or stipendiary magistrate may act as one of the justices empowered to grant or confirm licenses, so far as regards any licensing district wholly, or partly within his jurisdiction.

Every person intending to apply for a new license, or to apply for the transfer of a license, is to publish notice of such application as follows: that is to say,

In the case of a new license, he is to cause notice thereof to be given and to be affixed and maintained in the manner directed by 32 & 33 V. c. 27, before mentioned, and he is to advertise such notice in some paper circulating in the place in which the premises to which the notice relates are situate, on some day not more than four and not less than two weeks before the proposed application, and on such day or days, if any, as may be from time to time fixed by the licensing justices.

In the case of the transfer of a license he is, fourteen days prior to one of the special sessions appointed by the justices for granting transfers of such licenses, to serve a notice of his intention to transfer the same upon one of the overseers of the parish, township, or place in which the premises in respect of which his application is to be made are situate, and on the superintendent of police of the district. This notice is to be signed by the applicant or by his authorized agent, and is to set forth the name of the person to whom it is intended that such license shall be transferred, together with the place of his residence, and his trade or calling during the six months preceding the time of serving such notice.

Where a licensed person applies for the renewal of his license, the following provisions are to have effect. He need not attend in person at the general annual licensing meeting unless he is required by the licensing justices so to attend. The justices are not to entertain any objection to the renewal of such license or take any evidence with respect to the renewal thereof unless written notice of an intention to oppose the renewal of such license has been served on such holder not less than seven days before the commencement of the general annual licensing meeting. Provided that the licensing justices may, notwithstanding that no notice has been given, on an objection being made, adjourn the granting of any license to a future day, and require the attendance of the holder of the license on such day, when the case will be heard and the objection considered, as if the notice before prescribed had been given.

The justices are not to receive any evidence with respect to the renewal of such license which is not given on oath.

Subject as aforesaid, licenses are to be renewed and the powers and discretion of justices relative to such renewal are to be exercised as before.

No licenses are to be granted to any persons, or in respect of any premises, declared to be disqualified persons or premises in pursuance of the intoxicating liquors licensing acts. No premises (not being a railway refreshment-room) which at the time of the passing of the act were not licensed for the sale of any intoxicating liquor, to be consumed on them, are to be qualified to receive a license authorizing such sale unless they are situated within the city of

London or any place subject to the jurisdiction of the Metropolitan Board of Works, or within the four-miles radius of Charing Cross, or within the limits of any town containing not less than 10,000 inhabitants, of not less than £50 per annum in value; or if the license do not authorize the sale of spirits, £30 per annum. And if situated within the limits of a town containing not less than 10,000 inhabitants, £30 per annum; or if the license do not authorize the sale of spirits, £20 per annum. If situated elsewhere, £15 per annum; or if the license do not authorize the sale of spirits, £12 per annum.

The premises are to be adapted to the class of license for which the certificate is sought, but no house not licensed at the time of the passing of the act for the sale of any intoxicating liquor for consumption on the premises, is to be qualified to have a license attached thereto authorizing such sale, unless it contain, exclusive of the rooms occupied by the inmates of such house, if the license authorize the sale of spirits, two rooms, and if the license do not authorize the sale of spirits, one room, for the accommodation of the public.

A renewal of a license may be made by an endorsement on the license, or by the issue of a copy of the old license, but in the latter case there are to be endorsed on such copy all convictions made within the previous five years which are endorsed on the old license.

Licenses may be removed from one part of a licensing district to another part of the same district, or from one licensing district to another licensing district within the same county, in manner following:—

The application for an order sanctioning removal is to be made by the person desiring to be the holder of the license when removed, and is to be made at a general annual licensing meeting, or any adjournment thereof, to the justices authorized to grant new licenses in the licensing district in which the premises are situated to which the license is to be removed.

Notice of the intended application is to be given in the same manner as notice is given of an application for the grant of a new license.

A copy of the notice is to be personally served upon or sent by registered letter to the owner of the premises from which the license is to be removed, and the holder of the license, unless he is also the applicant.

The justices to whom the application is made are not to make an order sanctioning such removal unless they are satisfied that no objection to such removal is made by the owner of the premises to which the license is attached, or by the holder of the license, or by any other person whom such justices shall determine to have a right to object to the removal.

Every holder of a license, or of an order of exemption made by authority in pursuance of the act, is, by himself, his

agent, or servant, to produce such license or order within a reasonable time after the production thereof is demanded by a justice of the peace, constable, or officer of inland revenue, and deliver the same to be read and examined by him. Any person who acts in contravention of this shall be liable to a penalty not exceeding £10.

A license for the sale of liqueurs or spirits by retail not to be consumed on the premises may, where such license is required by the act, be granted in the same manner in all respects in which a license for selling wine not to be consumed on the premises may by law be granted, and an application for such a license is not to be refused except upon one or more of the grounds on which a certificate in respect of a license to sell by retail beer, cider, or wine not to be consumed on the premises may be refused.

Registers.—Registers of licenses are to be kept in licensing districts, and every person applying for a new license is to state the name of the owner of the premises, such name to be endorsed on the license; and the person whose name is so stated is to be deemed to be the owner of the premises, and a court of summary jurisdiction may substitute the name of any person who proves that he is entitled to be entered as owner of any premises in place of the person appearing on the register to be the owner. The licensing justices may cause the register to be divided into parts, and assign a part to any portion of the licensing district. A fee of one shilling for every license so registered to be paid to the clerk of the justices by each licensed person.

IV. CLOSING OF PREMISES.

Subject as next mentioned, all premises on which intoxicating liquors are sold or exposed for sale by retail, are to be closed as follows; that is to say,

If such premises are situated within the city of London or the liberties thereof, or any parish or place subject to the jurisdiction of the Metropolitan Board of Works, or within the four-mile radius from Charing Cross, on Sunday, Christmas-Day, and Good-Friday during the whole day before one of the clock in the afternoon, and between the hours of three and six of the clock in the afternoon, and after the hour of eleven of the clock at night: and on all other days before five of the clock on the following morning (*sic*).

If situated beyond the city of London and the liberties thereof, and the parishes or places subject to the jurisdiction of the Metropolitan Board of Works, or beyond the four-mile radius from Charing Cross, on Sunday, Christmas-Day, and Good Friday during the whole day before the hour of half-past twelve (or, if the licensing justices direct, one) in the afternoon, and between

the hours of half-past two (or, if one be the hour of opening, then three) and six in the afternoon, and after the hour of ten (or, if the licensing justices direct, any hour not earlier than nine and not later than eleven) at night, and on all other days before the hour of six (or, if the licensing justices direct, any hour not earlier than five and not later than seven) in the morning, and after the hour of eleven (or, if the licensing justices direct, any hour not earlier than ten and not later than twelve) at night.

Any person who sells or exposes for sale, or opens or keeps open any premises for the sale of intoxicating liquors during the time that such premises are directed to be closed, as has just been mentioned, or during such time as aforesaid allows any intoxicating liquors to be consumed on such premises, is for the first offence liable to a penalty not exceeding £10, and for any subsequent offence to a penalty not exceeding £20.

Any conviction for the above offence is to be recorded on the license of the person convicted, unless the convicting magistrate or justices otherwise directs. But a person licensed to sell any intoxicating liquor to be consumed on the premises is not to be precluded from selling such liquor to *bonâ fide* travellers, or to persons lodging in his house; nor is the sale at any time, at a railway station, of intoxicating liquors to persons arriving at or departing from such station by railroad to be precluded.

An order for the alteration of the closing hours may be made by the licensing justices at any general annual licensing meeting, or any adjournment thereof, held in pursuance of the 9 G. 4, c. 61; and also in Middlesex or Surrey at any time before the next general annual licensing meeting at any special sessions summoned for the purpose: provided that, twenty-one days at the least before any such meeting or adjournment, notice be given, in the same manner as is prescribed by the 9 G. 4, c. 61, for the holding of such meeting or adjournment, that the alteration of the closing hours will then be considered: provided that no order allowing licensed premises to remain open after the hour of ten at night on Sunday, Christmas-Day, or Good Friday, or after the hour of eleven at night on other days, is, as to such allowance, to apply to premises in respect of which a certificate is in force under the Wine and Beerhouse Acts, 1869 and 1870.

Nor are premises in respect of which such certificate is in force, if situated in a town containing less than two thousand five hundred inhabitants, and beyond the city of London and the liberties thereof, and the parishes or places subject to the jurisdiction of the Metropolitan Board of Works or beyond the four-miles radius from Charing Cross, on any day to be opened after the hour of ten at night. Any order made by the licensing justices for the alteration of closing hours is not to come into operation until the expiration of one month after date.

If any licensed victualler or keeper of a refreshment-house in

which intoxicating liquors are sold applies to the local authority of a licensing district for a license exempting him from the provisions of this act relating to closing of premises on any special occasion, it is to be lawful for such local authority to grant to the applicant an occasional license exempting him from the provisions of this act relating to closing of premises during certain hours, and on the special occasion specified in the license; and no licensed victualler or keeper of a refreshment-house to whom an occasional license has been so granted, is to be subject to any penalty for the contravention of the provisions of this act relating to the closing of premises during the time to which his occasional license extends, but he is not to be exempted by such occasional license from any penalty to which he may be subject by any other provision of this or any other act of parliament.

Any two justices of the peace acting for any county or place where any riot or tumult happens, or is expected to happen, may order every licensed person in or near the place where such riot or tumult happens, or is expected to happen, to close his premises during any time which the justices may order; and any person who keeps open his premises for the sale of intoxicating liquors during any time at which the justices have ordered them to be closed is liable to a penalty not exceeding £50; and it is lawful for any person acting by order of any justices to use such force as may be necessary for the purpose of closing such premises.

Illicit Sales.—No one is to sell any intoxicating liquors without a license, under a penalty for the first offence of a sum not exceeding £50, or imprisonment for one month; for the second offence, of a sum not exceeding £100, or three months' imprisonment, and disqualification from holding any license for the sale of intoxicating liquors for five years; for the third and any subsequent offence, of a sum not exceeding £100, or six months' imprisonment, and disqualification as above for any term of years.

The occupier of unlicensed premises is liable for the sale of liquors, and the seller of any intoxicating liquor is liable for drinking on or near his premises, contrary to license.

No spirits can be sold to any person apparently under the age of sixteen years, under a penalty of 20*s.* for the first offence and 40*s.* for the second and any subsequent offence. Any person who makes or uses any internal communication between licensed premises and any house of public resort, is liable to a penalty not exceeding £10 for every day during which such communication remains open; and if such person be holder of a license, he shall forfeit such license. There is also a penalty not exceeding £10 for the first, and £20 for any subsequent offence, on the stowing by any licensed person on his premises of intoxicating liquors which he is not authorized to sell, such liquor also to be forfeited.

Every licensed person is to cause to be painted or fixed, and is to

keep painted or fixed on the premises in respect of v
license is granted, in a conspicuous place and in such
manner as the Commissioners of Inland Revenue may from
time direct, his name, with the addition after the nam
word "licensed," and of words sufficient, in the opinion o
commissioners, to express the business for which his lic
been granted, and in particular of words expressing wh
license authorizes the sale of intoxicating liquor to be
on or off the premises only, as the case may be; and no
to have any words or letters on his premises importing
authorized as a licensed person to sell any intoxicati
which he is not in fact duly authorized to sell. Every pe
acts in contravention of these provisions is liable to a pe
exceeding for the first offence £10, and not exceeding
second and any subsequent offence £20.

No person is to sell by retail liqueurs or spirits under the
of any retail license which such person may have obta
wholesale spirit dealer from the Commissioners of Inland
except in premises occupied and used exclusively for
therein of intoxicating liquor, and which premises have
munication with the premises of nor are in any way occu
person who is carrying on any other trade or business, un
person first obtains from the licensing justices a license au
such sale in premises not exclusively so occupied and used

Adulteration.—Every person who adulterates any
sells the same knowing it to be adulterated, is liable fo
offence to a penalty not exceeding £20, or to imprison
a term not exceeding one month, with or without hard
and for the second and any subsequent offence to a pe
exceeding £100, or to imprisonment for a term not
three months, with or without hard labour, and to be d
be a disqualified person for a period of not less than two
exceeding ten years, and also in the case of the first as w
subsequent offence is to forfeit all adulterated liquor i
session, with the vessels containing the same.

Where the person so convicted is a licensed person, he i
in the case of a second or any subsequent offence, liable
his license, and the premises in respect of which such
granted are liable to be declared to be disqualified prem
period of not less than two years nor exceeding five years.

In the case of a first offence and any subsequent offence
license is forfeited, the conviction is to be recorded on t
of the person convicted.

Where a licensed person is convicted of any such
above and his license is not forfeited for such offence,
authority of the district is to cause a placard stating such
to be affixed to the premises. Such placard to be of suc
form, and to be printed with such letters, and to con

particulars, and to be affixed to such part of the licensed premises as the police authority may think fit, and such licensed person is to keep the same affixed during two weeks after the same is first affixed; and if he fails to comply with these provisions with respect to keeping affixed such placard, or defaces or allows such placard to be defaced, or if the same is defaced and he fails forthwith to renew the same, he is liable to a penalty not exceeding 40*s.* for every day on which the same is not so undefaced, and any constable may affix or re-affix such placard during the said two weeks, or such further time as may be directed by a court of summary jurisdiction.

Every licensed person, who has in his possession or on his premises any adulterated liquor, or any of the following deleterious ingredients, cocculus indicus, chloride of sodium otherwise common salt, copperas, opium, Indian hemp, strychnine, tobacco, darnel seed, extract of logwood, salts of zinc or lead, alum, and any extract or compound of any of the above ingredients, for the possession of which he cannot satisfactorily account, shall be deemed knowingly to have exposed for sale adulterated liquor in such premises.

Any of the following officers, that is to say, any superintendent of police or other constable authorized in writing by the police authorities so to do, or any officer of the inland revenue, may procure samples of any intoxicating liquor from any person selling or keeping or exposing the same for sale; he may procure such samples either by purchasing the same, or by requiring the vendor to show him and allow him to inspect all or any of the vessels in which any intoxicating liquor in the possession of the vendor is stored, and the place of the storage thereof, and to give him sample of such intoxicating liquor on payment or tender for such sample. Any expense incurred in analysing any intoxicating liquor, if the person selling the same be convicted of adulteration, is to be deemed to be a portion of the costs, and is to be paid by him accordingly. A constable may at all times enter on any licensed premises; he may also examine every room and part of such premises, and take an account of all intoxicating liquor stored therein. Penalty for refusing or failing to admit any constable, for the first offence £5, for every subsequent offence £10, and any conviction to be recorded on the license of the person convicted.

Offences against Public Order.—Every person found drunk in any highway or other public place, whether a building or not, or on any licensed premises, is liable to a penalty not exceeding 10*s.*, and on a second conviction within a period of twelve months to a penalty not exceeding 20*s.*, and on a third or subsequent conviction within such period of twelve months, to a penalty not exceeding 40*s.* Every person who in any highway or other public place, whether a building or not, is guilty while drunk of riotous or disorderly behaviour, or who is drunk while in charge, on any highway or other public place, of any carriage, horse, cattle, or

steam-engine, or who is drunk when in possession of any loaded firearms, may be apprehended, and is liable to a penalty not exceeding 40*s.*, or, in the discretion of the court, to imprisonment with or without hard labour, for any term not exceeding one month. If any licensed person permits drunkenness or any violent, quarrelsome, or riotous conduct to take place on his premises, or sells any intoxicating liquor to any drunken person, he is liable to a penalty not exceeding for the first offence £10, and not exceeding for the second and any subsequent offence £20. If any licensed person knowingly permits his premises to be the habitual resort or place of meeting of reputed prostitutes, whether the object of their so resorting or meeting is or is not prostitution, he is, if he allow them to remain thereon longer than is necessary for the purpose of obtaining reasonable refreshment, liable to a penalty not exceeding for the first offence £10, and for the second and any subsequent offence, £20. If any licensed person knowingly harbours or knowingly suffers to remain on his premises any constable during any part of the time appointed for such constable being on duty, unless for the purpose of keeping or restoring order or in execution of his duty; or supplies any liquor or refreshment, whether by way of gift or sale, to any constable on duty, unless by authority of some superior officer of such constable; or bribes or attempts to bribe any constable, he is liable to a penalty not exceeding, for the first offence £10, and for the second or any subsequent offence £20. And if he suffers any gaming or any unlawful game to be carried on on his premises; or opens, keeps, or uses, or suffers his house to be opened, kept, or used in contravention of 16 & 17 V. c. 119, intituled "An Act for the suppression of betting houses," he is liable to a penalty not exceeding for the first offence £10, and not exceeding for the second and any subsequent offence £20

Any conviction as above of a licensed person is to be recorded on the license of the person convicted.

If any licensed person is convicted of permitting his premises to be a brothel, he is liable to a penalty not exceeding £20, and is to forfeit his license, and he is to be disqualified for ever from holding any license for the sale of intoxicating liquors.

Any licensed person may refuse to admit to and may turn out of the premises in respect of which his license is granted any person who is drunken, violent, quarrelsome, or disorderly, and any person whose presence on his premises would subject him to a penalty under this act.

Any such person who upon being requested for any of the above reasons by such licensed person, or his agent or servant, or any constable, to quit such premises, refuses or fails so to do, is liable to a penalty not exceeding £5, and all constables are required to assist in expelling such person from the premises, and may use such force as is necessary.

If any licensed person on whose license two convictions for offences committed by him against this act have been recorded is convicted of any offence which is directed by this act to be recorded on his license, such person is to forfeit his license, and is to be disqualified for a term of five years from the date of such third conviction from holding any license; and the premises in respect of which his license was granted, unless the court having cognizance of the case in its discretion thinks fit otherwise to order, are to be disqualified from receiving any license for a term of two years from the date of such third conviction; but the court may inflict any pecuniary penalty or any term of imprisonment to which such licensed person would otherwise be liable, and the court may exercise any power given by the act of disqualifying such licensed person or such premises for a longer period than the term just mentioned.

The following additional provisions were enacted with respect only to convictions of persons who may hereafter become licensed in respect of premises, and are not to apply to a conviction of any person licensed for any premises at the passing of the act so long as he is licensed in respect of the same premises; viz.,

The second and every subsequent conviction recorded on the license of any one such person is also to be recorded in the register of licenses against the premises. When four convictions (whether of the same or of different licensed persons) have within five years been so recorded against premises, those premises are, during one year, to be disqualified for the purposes of the act. If the licenses of two such persons licensed in respect of the same premises are forfeited within any period of two years, the premises are to be disqualified for one year from the date of the last forfeiture: provided that where any premises are thus disqualified notice of such disqualification is to be served upon the owner of the premises in like manner as an order of disqualification is required to be served under the act, and the regulations for the protection of the owner of the premises in case of an order of disqualification are to extend to this disqualification. If any person deface or obliterate, or attempts to deface or obliterate, any record of a conviction on his license, he is to be liable to a penalty not exceeding £5. Where a license is forfeited in pursuance of the act, or becomes void under any of the provisions of the act, any license for the sale of intoxicating liquors granted by the Commissioners of Inland Revenue to the holder of such license is void.

Legal Proceedings.—This act applies the Summary Jurisdiction Act, 1848. Where any sum for costs (other than costs upon a conviction or order of dismissal of an information) or for compensation, or both, is ordered or awarded to be paid by any person, the amount thereof is to be recovered in manner directed by the Summary Jurisdiction Act, 1848, for the recovery of costs awarded upon the dismissal of an information or complaint.

If any person feels aggrieved by any order or conviction made by a court of summary jurisdiction, the person so aggrieved may appeal therefrom, subject to the conditions and regulations following:

The appeal is to be made to the next court of quarter sessions for the county or place in which the cause of appeal has arisen, holden not less than fifteen days after the decision of the court from which the appeal is made: the appellant is within seven days after the cause of appeal has arisen, to give notice to the other party and to the court of summary jurisdiction of his intention to appeal, and of the ground thereof: the appellant, immediately after such notice, is to enter into a recognizance before a justice of the peace, with two sufficient sureties, conditioned personally to try such appeal, and to abide the judgment of the court thereon, and to pay such costs as may be awarded by the court, or is to give such other security by deposit of money or otherwise as the justice may allow: where the appellant is in custody, the justice may, if he think fit, on the appellant entering into such recognizance or giving such other security as aforesaid, release him from custody. The court of appeal may adjourn the appeal, and upon the hearing thereof may confirm, reverse, or modify the decision of the court of summary jurisdiction, or remit the matter to the court of summary jurisdiction with the opinion of the court of appeal thereon, or make such other order in the matter as the court thinks just. The court of appeal may also make such order as to costs to be paid by either party as the court thinks just.

Where any tenant of any licensed premises is convicted of an offence against this act, and such offence is one the repetition of which may render the premises liable to be disqualified from receiving a license for any period, it is the duty of the clerk of the licensing justices to serve notice of every such conviction on the owner of the premises.

In proving the sale or consumption of intoxicating liquor for the purpose of any proceeding relative to any offence under the act, it is not necessary to show that any money actually passed or any intoxicating liquor was actually consumed, if the court hearing the case be satisfied that a transaction in the nature of a sale actually took place, or that any consumption of intoxicating liquor was about to take place; and proof of consumption or intended consumption of intoxicating liquor on premises to which a license under the act is attached, by some person other than the occupier of or a servant in such premises, is to be evidence that such liquor was sold to the person consuming, or being about to consume, or carrying away the same by or on behalf of the holder of such license.

All notices and documents required by the act to be served or sent may, unless otherwise expressly provided, be served and sent by post, and, until the contrary is proved, are to be deemed to

have been served and received respectively at the time when the letter containing the same would be delivered in the ordinary course of post; and in proving such service or sending it is sufficient to prove that the letter containing the notice or document was prepaid and properly addressed.

Exceptions to the Act.—Nothing in the act is to apply to privileges enjoyed by any university in England, or by the Mayor or Burgesses of the borough of St. Albans, in Hertfordshire, or the exemption from the obligation to take out a license enjoyed by the Vintners' Company of London, or to the sale of spruce or black beer, the sale of intoxicating liquor by proprietors of theatres, or in packet boats, in pursuance of the acts affecting them, the sale of spirits in canteens, the sale of medicated or methylated spirits, or spirits made up in medicine, and sold by medical practitioners, chemists, or druggists, the sale of intoxicating liquors by wholesale, or any penalties recoverable on behalf of the Commissioners of Inland Revenue or any laws relating to the excise.

No license is by the act required for the sale of wine by retail not to be consumed on the premises by a wine merchant in pursuance of a wine merchant's license granted by the commissioners of Inland Revenue.

V. RETAIL BREWERS.

By 1 W. 4, c. 51, a brewer is to make entry of every place and of every mash-tun intended to be used in brewing or in keeping worts, or beer, or storing malt or hops, at the nearest office of excise. Penalty for omission £200, and all worts, or beer, or materials for making the same, found in any place or mash tun not specified in such entry become forfeited. Officers may enter any place used by brewers, or retailers or beer, for the purpose of inspecting or taking an account of beer, malt, &c.; brewers or dealers, obstructing such inspection, to forfeit £100. No brewer, on penalty of £200, to have in his brewery, or any part of his entered premises, or in any mill connected with such brewery, any *raw* or *unmalted corn* or *grain*; and all unmalted corn or grain which shall be found, and all malted corn or grain with which unmalted corn or grain shall have been mixed, become forfeited, with all boxes or packages containing the same. See further, 10 & 11 V. c. 5.

VI. THEATRES.

These are regulated by 6 & 7 V. c. 68, which, after repealing certain acts or parts of acts relative to theatres, except as to licenses already granted, provides that no person shall keep open any house or place for the public performance of stage-plays without the authority of letters patent, or a license from the lord

chamberlain, or the justices of the peace, under the penalty of a sum not exceeding £20 for every day such house shall have been kept open without license. The lord chamberlain is to have authority to grant licenses to theatres within the parliamentary boundaries of London and Westminster, and the boroughs of Finsbury, Marylebone, the Tower Hamlets, Lambeth, and Southwark; also within New Windsor and Brighton, and wherever her Majesty may occasionally reside; but no license to be granted within Oxford or Cambridge, or within fourteen miles of the same, without the consent of the chancellors or vice-chancellors of the same. For every such license a fee is to be paid to the lord chamberlain, to be fixed by himself, according to a scale, but not to exceed ten shillings for each calendar month, during which the theatre is licensed to continue open. Elsewhere the justices are to grant licenses, but the fee to their clerk is not to exceed five shillings a month. The license in all cases is only to be granted to the actual and responsible manager for the time being, whose name and place of abode shall be printed on every play-bill issued by him; and who shall become bound himself in a sum not exceeding £500, with two sureties for sums not exceeding £100 each, for due observance of the rules respecting theatres in force at the time, and for payment of penlaties for any breach of the same. The lord chamberlain and the justices, within their jurisdictions, may suspend any license in cases of riot or misbehaviour, or order the theatres to be closed on any public occasion; any theatre opened in contravention of such orders to be deemed an unlicensed theatre, and the manager subject to the penalties thereby incurred. Persons performing for hire in any *unlicensed theatre*, or causing, permitting, or suffering to be acted, any part in any stage-play, to forfeit, at the discretion of the justices, a sum not exceeding £5 for every day on which they offend. No new play or additions to old ones, no new or altered prologue or epilogue, to be acted or recited, till copies have been deposited with the lord chamberlain seven days at least before the intended representation, signed by the manager, with the place where, and the time when, it is intended to produce the same, and accompanied with a fee not exceeding two guineas; but the period of seven days is not to be reckoned to run till the fee is paid. The lord chamberlain, or his deputy, may except to the whole or any part of such play, prologue, or epilogue, and upon such disallowance, or before the expiration of the seven days, if any person shall represent, or cause to be represented, any such play, &c., he shall become liable to a penalty affixed by the justices before whom he is convicted, of any sum not exceeding £50 for each offence, and the license, in case of there being such, becomes void. Wherever money or other reward is taken for admission, directly, or indirectly; or where the purchase of an article of some kind is made a condition of admission; or wherever distilled or fermented liquors are sold, the actors

are to be deemed as acting for *hire;* and in cases of proceedings against persons for keeping an unlicensed place or for acting for hire therein, the burden of proof shall lie on the party accused, and such place, unless proved to the contrary, be taken to be unlicensed. No person to be prosecuted under this act, unless the prosecution be commenced within six months after the committal of the offence. The word "stage-play" is declared to include all theatrical entertainments whatever; but the act is not to apply to booths or shows exhibiting at any lawful fair allowed by the magistrates. An agreement for a partnership, to act plays contrary to the statute, would not be enforced by the courts, *Ewing* v. *Osbaldiston*, 2 *M.* & *C.* 53. Within the metropolitan limits, unlicensed theatres to which admission is obtained by payment of money, may be entered by the police, the owner of the place subjected to fine and imprisonment, and persons found therein may be fined.

VII. ADULTERATION.

By 56 G. 3, c. 58, no brewer or retailer of, or dealer in, beer to have in his possession, or make, use, mix with, or put into any wort or beer or liquor, extract, calx, or other material or preparation for *darkening the colour*, other than brown malt, ground or unground, as commonly used in brewing; or have in his possession, use, mix, or put into any wort or beer, any molasses, honey, liquorice, vitriol, quassia, cocculus indicus, grains of paradise, quince, pepper, opium, or any extract or preparation of molasses, or any article or preparation whatever, as a substitute for malt or hops. Penalty £200 for every offence, and forfeiture of all such adulterations, with the beer, wort, casks, vessels, and packages.

By s. 3, if any *druggist*, *dealer in drugs*, *chemist*, or other person, send, deliver, or sell to any brewer, retailer of, or dealer in beer, knowing him to be licensed, or reputed so to be, or to any other person on account of such brewer, &c., any liquor, known by the name of *colouring*, from whatever materials made, or any preparation other than unground malt, for darkening the colour of beer, or any liquor or preparation, whether to be used in wort or beer, as a substitute for malt or hops, he shall forfeit £500 for every offence, together with the prohibited article.

By 38 & 24 V. c. 84, s. 1, every person who sells *any article of food or drink* with knowledge that it contains any ingredient injurious to health, or who sells as pure any adulterated article, shall, on conviction before two justices, pay a penalty not exceeding £5, with costs of conviction. Repetition of the offence subjects the offender to be publicly advertised.

By s. 2, analysts may be appointed *in the city of London* by the commissioners of sewers, *in other parishes of the metropolis* by

vestries or district boards, and in the country by quarter sessions, or town councils in boroughs. Appointment, removal, or salary to be approved by a secretary of state. To prevent tampering with an article by purchaser, notice to be given by him to the seller of his intention to have it analyzed. Purchaser may have an article analyzed, and receive a certificate of the same on payment of not less than 2*s.* 6*d.*, nor above 10*s.* 6d. Certificate to be evidence. Power given to justices to have food or drink complained of analyzed. Right of appeal against conviction. Persons convicted of selling adulterated patented articles may have a case stated for opinion of superior court, ss. 3–8.

In construction the "articles of food or drink" to include all eatables and drinkables, not being medical drugs or articles usually sold as medicines. Act not to affect the ordinary reduction of British or colonial spirits. Act extends to England, Ireland, and Scotland.

The Adulteration of Food Act (35 & 36 V. c. 74) incorporates the Pharmacy Act, 1868, and 23 & 24 V. c. 84.

It also enacts that every person who shall adulterate articles of food, or drink, or any drug, shall for the first offence forfeit and pay a penalty not exceeding fifty pounds, together with costs of conviction, and for the second offence shall be guilty of a misdemeanour, and be imprisoned for a period not exceeding six calendar months, with hard labour. And it is also enacted that every person who shall sell any article of food or drink or any drug as unadulterated, knowing that the same is adulterated, shall for every such offence, on a summary conviction, forfeit a penalty not exceeding twenty pounds, together with cost of conviction; and if any person so convicted shall afterwards commit the like offence, it is provided that such offender's name, place of abode, and offence, shall be published at his expense in such manner as shall be deemed advisable.

Any person who sells any article of food or drink or any drug, knowing the same to have been mixed with any other substance with intent fraudulently to increase its weight or bulk, and who does not declare such admixture to any purchaser thereof before delivering the same and no other, is to be deemed to have sold an adulterated article of food or drink or drug.

In the city of London and the liberties thereof the commissioners of sewers of the city of London and the liberties thereof, and in all other parts of the metropolis the vestries and district boards acting in execution of the act for the better local management of the metropolis, in England the court of quarter sessions of every county, and the town council of every borough having a separate court of quarter sessions, or having under any general or local act of parliament or otherwise a separate police establishment, in Ireland the grand jury of every county, county of a city, and county of a town, and town council of every borough, and in Scotland the

commissioners of supply at their ordinary meetings for counties, and the commissioners or boards of police, or, where there are no such commissioners or boards, the town councils for boroughs, within their several jurisdictions, may appoint, and when required so to do by the local government board in England, or by one of her Majesty's principal secretaries of state in Scotland, or by the lord lieutenant or other chief governor or governors in Ireland, are, for their respective city, districts, counties, or boroughs, to appoint and remove competent persons as analysts, and are to pay them such salary or allowances as they may think fit, but such appointments and removals are at all times to be subject in England to the approval of the local government board, in Scotland of one of her Majesty's principal secretaries of state, and in Ireland of the lord lieutenant or other chief governor or governors

The inspector of nuisances, or the inspector of weights and measures, or the inspector of markets, one or all of them, as the local authority appointing them may think fit to determine, in every district, county, city, or borough, are to procure and submit samples of articles of food or drink and drugs suspected to be adulterated to be analyzed by the analysts appointed under the act, and, upon receiving a certificate stating that the articles of food or drink or drugs are adulterated, are to cause a complaint of an offence against the act by the party selling or adulterating such articles of food or drink or drugs to be made before a justice of the peace, and thereupon such justice is to issue a summons requiring the seller or the adulterator to appear before two justices of the peace at petty sessions in England, or before two justices of the peace in the justice of the peace court, or before the sheriff substitute of the county, or before any magistrate acting under any general or local police act in Scotland, or before justices of petty sessions or divisional justices in Ireland, to answer such complaint, and the expense of such prosecutions, if not ordered to be paid by the party complained against, is to be deemed part of the expense of executing the act.

The analysts appointed under the act are to report quarterly to the local authorities appointing them the number of articles of food, drink, or drugs analyzed by them under the act during the foregoing quarter, and are to specify the nature and kind of adulterations detected in such articles of food, drink and drugs.

On the hearing by the justices, sheriff substitute, magistrate, or divisional justice of any complaint in any district, county, city, or borough wherein analysts have been appointed, it must be proved that the article of food or drink or drugs alleged to be adulterated was delivered to the analysts in the same condition as regards its purity or impurity as it was when received from the seller.

Any purchaser of any article of food or drink or drugs in any place where there is an analyst, is entitled, on payment to the inspector of a sum not less than 2*s.* 6*d.* nor more than 10*s.* 6*d.*,

which is to be accounted for to the local authority, to have any such article analyzed, and to receive a certificate of the result, duly signed by the analyst, which certificate is, in the absence of contrary evidence, to be sufficient evidence of the matters certified in it, and the sum directed to be paid is to be deemed part of the costs.

CHAPTER XX.

Carriers, Wharfingers, and Warehousemen.

ALL persons carrying goods for hire, as masters and owners of ships, lightermen, proprietors of waggons, stage coachmen, and the like, come under the denomination of *common carriers*, and are bound to receive and carry goods for a reasonable hire; to take due care of them in their passage; to deliver them in the same condition they were received, or, in default, to make compensation, unless the loss arise from unavoidable natural occurances, as lightning or tempests, or from the default of the parties sending them.

Hackney coachmen in London, are not so bound except there be an express agreement, and money paid for the carriage of the goods.

Special carriers, who professedly do not carry for all persons indiscriminately, are not, like common carriers, *bound* to undertake the carriage of goods. Where, however, a person *undertakes* to carry goods safely and securely, he is responsible, though he is not a common carrier, nor receives a premium for the carriage.

The master of a stage-coach, who only carries *passengers for hire*, is not liable for goods. But if he carry *goods as well as passengers* for hire, then he is a common carrier, and liable.

If a carrier entrusted with goods open the pack and take away part of the goods, he is guilty of felony. It is the same if the carrier receive goods to carry to a certain place, and carry them to some other place than that appointed, with intent to defraud the owner.

If a common carrier, who has convenience, is offered his hire, and refuse to carry goods, he is liable to an action, in the same manner as an innkeeper who refuses to entertain his guest, or a smith who refuses to shoe a horse. The liability arises, not from the remuneration, but the *public* employment that is undertaken.

But a carrier may refuse to admit goods into his warehouse at an *unreasonable* time, or before he is ready to take his journey.

If a carrier be robbed of the goods, he is liable; for, having his hire, there is an implied undertaking for the safe custody and delivery of the goods. But the carrier, under certain circum-

stances, may bring his action against the hundred to make good his loss.

The action against a carrier for the non-delivery or loss of goods must be brought by the person in whom the *legal right* of property in the goods is vested at the time; for he is the person who has sustained the loss by the negligence of the carrier. So, where a tradesman orders goods to be sent by a carrier, the moment the goods are delivered, it operates as a delivery to the purchaser, and the whole property from that time vests in the purchaser, who can alone bring an action for loss or damage. But if there is a special agreement by the parties, that the consignor was to pay for the carriage of the goods, the action is maintainable by the consignor.

Goods conveyed by a carrier, whether common or hired for the particular purpose, are privileged from distress or attachment on account of the debts of the person sending them, or of the carrier.

A delivery to the carrier's servant is a delivery to himself, and shall charge him; but they must be goods such as it is his custom to carry.

On legal principles, it can make no difference whether the carriage is by land or water, but the legislature has limited the liability of water carriage by sea in cases where railway companies who carry animals, luggage, or goods partly by land and partly by sea publish a printed notice which must be placed in some conspicuous place, stating that they will not be liable for loss or damage, 31 & 32 V. c. 119, s. 14.

It seems a general rule that a carrier is bound to deliver goods at the residence of the consignee or person to whom they are directed, where he has been accustomed to carry them home, and keeps a porter for the purpose; and where it is not customary for him to deliver at the owner's premises, it is obligatory on him to give timely notice of their arrival.

A carrier has a *lien* on the goods he carries for his hire, but it is limited to the carriage of each parcel, and not general, that is, for a general balance due to the carrier from the sender for successive packages, or for a debt due to him by the consignee; but in no case can he charge more than is reasonable for his trouble, 3 *Taunt.* 164. The powers and liabilities of railway proprietors in the carriage of goods are similar to those of carriers and stage-coach proprietors.

Warehousemen are, when goods are stored in the warehouse, bound to bestow reasonable and common care on them, so as to prevent them from being damaged or injured. *Wharfingers*, also, are bound to perform the same trust. But neither warehousemen nor wharfingers are liable for damages happening from accidental fire. Should they, however, have insured the goods, and received the insurance money, they are liable to pay to the owners of the goods the money so obtained. 2 *Stark.* 400.

Limitation of Liabilities.—The onerous responsibility imposed on common carriers has been limited by the 1 W. 4, c. 68, which provides that no mail contractor, coach proprietor, or other common carrier by land for hire, shall be liable for the loss or injury to gold and silver coin, bullion, jewellery, precious stones, watches, clocks, timepieces, trinkets, bills, notes, orders, or securities, for payment of money, stamps, maps, writings, deeds, pictures, plate, glass, china, furs, lace, and silks, *above the value of* £10, contained in any packet that has been either delivered to be carried, or to accompany the person of any passenger, unless the value and nature of the article be declared at the receiving house, and an increased charge for conveyance be accepted. A notice of the increased rate of charges must be affixed, in *legible characters, on a conspicuous part of the receiving-house:* and parties sending valuable packets of the description mentioned are bound by such notice without further proof of the same having come to their knowledge. Carriers not giving receipts, if demanded, of the increased rate required for the insurance of packets, or not affixing the notice, are excluded from the benefit of the statute; such receipts are not liable to the stamp duty. The publication of the notice does not limit the liability imposed by the common law, in respect of other goods than those mentioned, conveyed by carriers; neither does the act affect any *special contract* made between carriers and parties for the conveyance of goods. In case of loss, carriers are not liable to make good the *declared value*, but only to the extent of the damage, actually sustained, and proved by the ordinary legal evidence.

The 28 & 29 V. c. 94, provides for the better protection of stage-coach proprietors or other common carriers for hire against the loss of or injury to parcels delivered to them for conveyance or custody, the value and contents of which have not been declared to them by the owners, that the term "lace" with respect to any parcel delivered after the commencement of the act (Sept. 20, 1865) shall be construed not to include machine-made lace.

Penalties.—By the Turnpike Acts, the owners of every waggon, wain, cart, or such like carriage, is required to paint, on the right or off side, his christian and surname and abode, at full length, in large legible characters, of not less than one inch in height. Penalty not exceeding £5.

One driver may take charge of two carts, if drawn by only one horse. No child *under* the age of thirteen to drive any cart. Penalty on the owner not exceeding 10*s*. A driver of a waggon, cart, &c., riding thereon (except in case of such light carts as are usually driven with reins), or wilfully being at such distance from the same that he cannot have any government of his horses, *or driving* any vehicle without the *owner's name*, or not keeping *the left* or near side of the road, shall, for every offence, forfeit not exceeding 40*s*. or if the owner, £5; and, in default

committed to the house of correction for not
e month. Drivers refusing to discover their names,
se cases, are liable to be imprisoned three months.
he Road. — Whenever carriages or horsemen meet
ic road, the law, in case of accident, is always
the defensive party, and against the aggressor.
an rides against another who stands still, or drives
against a coach or other vehicle, and injures it,
able for the damage. A driver or rider, on passing
e or carriage, must keep on the off side, or whip
horse or carriage he may so meet, otherwise he
erable for any damage which may happen from
of this rule. A driver, however, is not bound to
eft side of the road, provided he leave sufficient room
riages and horses to pass him on their proper side.

CHAPTER XXI.

of Coal, Tobacco, Bakers, Weights and Measures.

I. COAL.

4, c. 76, regulates the vend and delivery of coals
Westminster, and parts of the counties of Middle-
Kent, Essex, Hertfordshire, Buckinghamshire, and

itan coal acts were amended in 1851 by 14 &
Certificate of the quantity and quality of sea-
be given by the fitter, and registered at the coal
rrival of the ship. Consignee of coals brought
gon to enter a certificate within 48 hours after
'er penalty not exceeding £100 Corporation of
int collector to receive duties on coals brought by
vigation ; railways within the London districts
ekly, and canal companies to make monthly
brought. Corporation may appoint inspectors
anals and railways, with power to inspect books ;
panies refusing such inspection not above
may be required by the corporation within
for the use of inspector, box or station-place,
twenty miles from General Post-office, such
ed on the line of canal or railway, or on any
road. If coals exceed weight mentioned in
ttent of 5 lbs. in 100 lbs., additional duty
be levied, besides penalty of £100. From
drawback of 12*d.* per ton to be allowed on

sea-borne coals, taken without previous landing, beyond 20 miles from General Post-office by ship or canal, or to be exported coastwise, or to foreign parts. Like drawback on coals brought by inland navigation, and taken beyond 20 miles from the Post-office by railway or by canal. Like drawback on coals brought by railway, and taken beyond 20 miles by canal. All coals brought by railway, within the London district, and conveyed beyond the district by railway, to be *exempt from duty*. Corporation may allow a drawback of 12*d*. per ton on coke. Drawbacks not to be allowed in any case, unless for a quantity exceeding 20 tons. Certificates to be given by persons receiving transported coals beyond the London district. For expense of executing the act 1*d*. per ton may be levied upon every ton on which drawback has been allowed. Lightermen employed to carry coals to any vessel or railway, not delivering the whole of such coals, liable to a penalty not exceeding £100.

II. TOBACCO.

The provisions against the culture of tobacco in Britain, are, by 1 & 2 W. 4, c. 13, extended to Ireland, and the growth of tobacco in any part of the United Kingdom is prohibited under a penalty of £10, except in a medicinal garden to the extent of one half pole. Dealers in tobacco or snuff, having any such prohibited tobacco in any quantity in possession, or any other person to the amount of one pound, is subject to a penalty of £100. Persons employed in the adulteration of tobacco with herbs or other material, or vending the same, may be imprisoned six months, or fined £100. Persons cutting walnut-tree, hop, sycamore, or other leaves in *imitation* of tobacco, forfeit £100. Mixing any ingredient, except water, with tobacco, exceeding two per cent., or with snuff exceeding four per cent., subjects the same to forfeiture, 3 & 4 V. c. 18. Having in possession any sugar, treacle, commings, lime, ochre, sea-weed, ground or unground chicory, or similar adulterations, subjects, under 5 & 6 V. c. 93, to a penalty of £200. The removal of any quantity of tobacco above the weight of *four pounds*, or of snuff above two *pounds*, without a permit, is prohibited, on pain of forfeiture.

III. BAKERS.

The making of bread in the country is regulated by 6 & 7 W. 4, c. 37, and its provisions assimilated to 3 G. 4, c. 106, which regulates bakers in the metropolis. Bread may be made of any weight or size; but must be sold by weight only (French rolls and fancy bread excepted.) Bakers to use avoirdupois weights *and* no other. Penalty for using false weights, £5. Bakers *delivering* bread by cart, &c., to be provided with scales and *weights*. Bakers convicted of adulterating bread, liable to

penalty of £10, and to have their names and abodes advertised in the newspapers. Penalty for adulterating flour, meal, &c., £20. Bread made of mixed meal and flour to be marked with the letter "M." Magistrates and peace officers, by warrant, may search baker's premises, and seize and carry away adulterated flour and meal. Penalty for obstructing search, £10. Ingredients for adulterating flour, meal, &c., being found on baker's premises, subject the offender to a penalty of £10, and the like sum for every subsequent offence. Offences occasioned by the wilful default of journeyman bakers, subject them to a fine or imprisonment. Bakers not to bake bread or rolls on the Lord's day, or sell bread, or bake pies, &c., after half-past 1 of the clock in the afternoon. Bakings may be delivered until half-past 1 o'clock, and not later, on Sundays, under the penalty of 20*s*. No baker, mealman, or miller, to act as a magistrate under the act, under a penalty of £100. One half of each penalty to go to the informer (and 3*s*. extra on Sundays for his expenses), and the other moiety to the overseer, or other parochial officer. Act does not extend to Ireland, nor the regulations as to bakings on Sundays to Scotland.

IV. WEIGHTS AND MEASURES.

WEIGHTS AND MEASURES.—By 5 G. 4, c. 74, amended by subsequent statutes, attempts have been made to enforce and establish uniformity in the weights and measures of the United Kingdom. By these statutes an imperial standard yard, pound, gallon, and bushel are fixed, and the principle laid down on which they may be renewed if lost or destroyed. Models and copies of these and their parts and multiples are to be deposited at the chamberlain's office, Westminster, and sent to London, Edinburgh, Dublin, and other cities and places. The magistrates are to procure them for the use of their respective counties, and contracts are to be governed by these standards. The old wine gallon of 231 cubic inches, the ale and beer gallon of 282 inches, the old corn gallon of 268·8, the old Scots pint or Stirling jug, with all other local measures of capacity of every description were abolished. The imperial standard gallon is 277·274 cubic inches, and the proportion it bears to the old wine gallon is nearly as 6 to 5, to the ale gallon as 59 to 60; to the corn gallon as 33 to 32; to the Stirling pint as 59 to 22. The *legal stone* is fixed at 14 lbs. avoirdupois, and the use of all others abolished. All articles sold by weight must be sold by avoirdupois weight, except gold, silver, platina, precious stones, and drugs in retail, which are to be sold by troy weight. Local and customary measures are abolished; also heaped measures; but articles heretofore sold by heap measure may either be sold by the bushel filled to the brim, or some aliquot part thereof, or by weight. *Coals* must be sold by weight only. Weights

made of lead or pewter are not to be stamped or used. The privileges of leet juries and of local bodies in the metropolis were not infringed.

By 22 & 23 V. c. 56, s. 2, if any person knowingly make or sell any false or unjust beam, scale, or balance, or any light or unjust weight or measure, he shall forfeit any sum not above £10, as adjudged by magistrate or sheriff. Power given to examine weights and measures in possession of persons offering goods for sale in any public street or open ground, and if found fraudulent, or if any fraud be committed in the use of them, they may be seized, and the offender subjected to any penalty not exceeding £5. By s. 4, municipal corporations are empowered to appoint inspectors and examiners of weights and measures, and to provide copies of the imperial standard. Inspectors and examiners so appointed may exercise the same powers of entering shops, stores, warehouses, manufactories, stalls, yards, and places within the borough, and of examining and comparing, trying and seiving, weights or measures as heretofore exercised by the inspector and examiner appointed by county justices at quarter sessions. For the convenience of seller and buyer, the inspectors are authorized to stamp measures if made partly of copper or other metal and partly of glass or other transparent medium.

In 1866, by 29 & 30 V. c. 82, a transfer of authority over weights and measures, and the standard trial-pieces of the coin of the realm was made, and the custody of the imperial standards of length and weight, and of all secondary standards, and of all balances, apparatus, documents, and things used in the exchequer at Westminster, or in the care of the comptroller-general, became vested in the Board of Trade, with all power and duties relative thereto, or imposed in the Treasury. By s. 2, the Board of Trade once in every ten years to cause the three parliamentary copies of the imperial standards of length and of weight deposited at the Mint, with the Royal Society of *London*, and in the Observatory of *Greenwich*, to be compared with the imperial standards of length and of weight and with each other. By s. 3, working secondary standards to be called the Board of Trade standards. Every five years the Board to cause the standards in use to be compared with the imperial standards of length and weight and with each other, and to be adjusted or renewed, if requisite. Definition to be given by order in council of the amount of error to be tolerated and authorization of further secondary standards. By s. 9, from the passing of the act an indenture of verification of any standard, or any indorsement on any such indenture, not to be liable to *stamp duty, nor any fee* payable on the verification or re-verification. The Board of Trade to constitute a department of their office, to be called the standard weights and measures department, and to appoint a warden of the standards, with so many clerks and officers and salaries as the Treasury shall approve. By s. 11, provision

made for comparison of standards in aid of scientific researches. By s. 13, the custody of the standard trial pieces of gold and silver used for determining the justness of the gold and silver coins of the realm issued from the Mint, and of all books, documents, and things used in connection therewith deposited in the exchequer to be transferred to the Treasury.

In 1864, the 27 & 28 V. c. 117, rendered permissive the metric system of weights and measures, for the promotion of home and foreign trade and the advancement of science. By s. 2, no contract or dealing is to be deemed invalid, or open to objection, on the ground that the weights or measures expressed or referred to are of the metric system, or decimal subdivision of legal weights and measures, whether metric or otherwise are used in contract and dealing. Annexed to the act is a table of the equivalents of weights and measures, expressed in terms of the metric system.

CHAPTER XXII.

Travellers and Passengers.

UNDER this head will be included the laws relative to railways, stage-coaches, post-horses, hackney coaches, locomotives, emigrant ships, and passengers by sea.

I. RAILWAYS.

The powers of inspection and control over the construction of railways are now by 3 & 4 V. c. 97, and 14 & 15 V. c. 64, vested in the Board of Trade. Every railway company may be directed by the Board of Trade to deliver a table of all tolls, rates, and charges levied on each class of passengers, and on cattle and goods, conveyed on the railway: and if not delivered within thirty days after the same shall have been required, every such company shall forfeit £20 for every day during which the company shall neglect to deliver the same; and every officer of any company making false returns shall be deemed guilty of a misdemeanour.

Copies of the by-laws, rules, &c., of every company are to be laid before the Board of Trade, or otherwise to be void.

No by-law valid until two months after it has been laid before the Board, unless it shall be certified as approved of before the expiration of that period; and the Board of Trade is empowered to disallow any of the by-laws.

Any person in the employ of a railway company found drunk while so employed, or who shall negligently or wilfully endanger the life or limb of any person, or the works or carriages, may be summarily punished by imprisonment, with or without hard labour,

for any term not more than two months, or sentenced to the payment of any penalty of not more than £10.

Persons trespassing upon or wilfully obstructing the officers of a railway, may be apprehended and taken before a justice, who may sentence them to a fine of any sum not exceeding £3, and in default of payment to imprisonment for any term not exceeding two months.

The 7 & 8 V. c. 85, passed in 1844, empowers the lords of the Treasury, if after twenty-one years from the passing of any *future* railway act, the profits shall exceed 10 per cent. per annum on an average of the three preceding years, to revise the tolls so as to reduce the divisible profit to 10 per cent.; or they may purchase any such future railway at twenty-five years' purchase. Future railway companies, or such companies as may obtain any extension or amendment of the powers conferred on them by their previous acts, shall, by means of one train at the least once on every week-day, except Christmas Day and Good Friday (such exception not to extend to Scotland), provide for the conveyance of *third-class passengers* to and from the terminal and other ordinary passenger stations of the railway, under the obligations contained in their several acts of parliament, and with the immunities applicable by law to carriers of passengers by railway; and also under the following conditions:—

Such train shall start at an hour to be from time to time fixed by the directors, subject to the approval of the Board of Trade; it shall travel at an average rate of speed of not less than twelve miles an hour for the whole distance travelled on the railway, including stoppages: if required, it shall take up and set down passengers at every passenger station which it shall pass on the line; the carriages in which passengers shall be conveyed by such train shall be provided with seats, and shall be protected from the weather; the fare for each third-class passenger shall not exceed 1*d.* for each mile travelled; each passenger shall be allowed to take with him half a hundredweight of luggage, not being merchandise or other articles carried for hire or profit, without extra charge; and any excess of luggage shall be charged by weight, at a rate not exceeding the lowest rate of charge for passengers' luggage by other trains; children under three years of age accompanying passengers by such train shall be taken without any charge, and children three and upwards, but under twelve years of age, at half the charge for an adult passenger.

Whenever trains run on Sunday on any railway, carriages are to be attached to such train each way as shall stop at the greatest number of stations for third-class passengers, and the charge not to exceed 1*d.* per mile.

By 21 & 22 V. c. 75, the charge for a third-class passenger for *any distance* less than a mile to be one penny; or if the distance

run is one or two or more miles, then for each fraction of a mile exceeding half a mile the charge to be a halfpenny. By s. 3, canal companies being also railway companies, not to take lease of other canals unless under the power of some act.

The 8 V. c. 20, consolidates certain provisions usually inserted in railway acts, and applies to all acts subsequently obtained. It enacts penalties for sending dangerous goods, as vitriol, by railways, and provides for the public exhibition of tables of tolls, and the erection of milestones. By s. 103, persons attempting to practise frauds on a railway company by travelling beyond the distance for which they have paid, are subject to a penalty of 40*s*., and may be detained by the officers of the company.

Guage of Railways.—The 9 & 10 V. c. 57, renders it unlawful to construct any railway for the conveyance of passengers on any guage other than four feet eight and a half inches in Great Britain, and five feet three inches in Ireland; but this guage does not extend to the repair and maintenance of railways already constructed, nor to any railway constructed under the provisions of any present or future act containing a special enactment defining the guage of such railway; nor to any railway which in its whole length is southward of the Great Western. Guage of any railway not to be altered after passing of the act. Penalty for constructing any railway contrary to to the act, £10 per mile for every day such railway is in use.

Liabilities.—By 17 & 18 V. c. 31, every railway and canal company is required to make arrangements for receiving and forwarding passengers and goods without unreasonable delay, and without partiality or preference. Parties complaining that reasonable facilities for traffic are withheld, may apply, by motion or summons, to a superior court; upon certificate of the Board of Trade of such want of facilities, addressed to the chief law-officer of the Crown in England, Scotland, or Ireland, the court, if it think fit, may direct inquiry, and issue an injunction. Disobedience to injunction to be liable to a penalty of £200 per day. Companies made liable for neglect or default in the carriage of goods, notwithstanding notice to the contrary, but not liable beyond a limited amount, as £50 for a horse, or £15 for neat cattle, &c., unless on an extra value of the article having been declared and paid for, s. 7.

Arbitration of Disputes by Railway Companies.—The 22 & 23 V. c. 59, enables railway companies to settle their differences with other companies by arbitration, and the act extends to all persons being the owners or lessees of, and all contractors working, any railway upon which steam power is used. Reference under the seals of companies to the arbitration of one or more persons, may be of any difference between companies or the terms of any contract between them. Power given to alter or revoke agreements for reference. Except where companies agree to refer to one arbitrator only, the reference is to be to as many arbitrators as companies,

one for each. Any company failing to appoint an arbitrator within fourteen days, the appointment to be made by the Board of Trade. An appointment of an arbitrator not revocable, but vacancies may be supplied by the companies or Board of Trade. Arbitrators may appoint an umpire; or failing, on application of the companies the Board of Trade may appoint an umpire. Power given to arbitrators or umpire to call for books, documents, and evidence, and to examine witnesses on oath administered by them. Several awards may be made, and awards made in writing within thirty days to bind all parties. Umpire may extend period for making awards. Awards not to be set aside for informality. Courts of law and equity to give effect to awards. Costs to be settled by arbitrators and umpire. Submission to arbitration to be made a rule of court, ss. 1-29.

Act of 1871.—By 34 & 35 V. c. 78, the Board of Trade can appoint inspectors for the purpose of inspecting any railway and of making any enquiry with respect to any railway, or into the cause of any railway accident, but no inspector is to interfere with the affairs of any company. The inspectors are empowered to inspect the offices, stock, plant, &c., of any railway, and to summon for examination any person employed by any railway company, and to enforce the production of documents, &c.

The railway companies are to make returns of accidents to the Board of Trade, and furnish the Board with annual statements of their capital, traffic, and working expenditure; penalties are imposed on persons disobeying or obstructing the inspectors appointed by the Board of Trade.

The Board of Trade can direct an enquiry into accidents and formal investigations in serious cases.

A railway company contracting to carry persons, animals, or goods, by sea, who procure them to be carried in a vessel not belonging to the company is answerable on damages in respect of loss of life, or injury, or otherwise, as if the vessel belonged to the railway company.

Acts of 1864.—By complying with the conditions of a general act, the 27 & 28 V. c. 120, railway companies are enabled by uniting to obtain further powers without the need of obtaining in each case a special act of parliament. The cases within the act are, first, where a company are desirous that authority should be given them and some other railway company to enter into an agreement with respect to all or any of the matters following, namely: the maintenance and management of railways, or of any one or more of them, or of any part thereof; the use and working of the railways and the conveyance of traffic; the fixing, collecting, and apportionment of the tolls, rates, charges, receipts, and revenue arising in respect of traffic; the joint ownership, and use of a station or other work; or the separate management: second when a railway company are desirous of obtaining an extension o

the time limited for the sale by them of superfluous lands: and third, where a company incorporated by special act or by certificate are desirous of obtaining authority to raise additional capital.

By a subsequent act of the session 27 & 28 V. c. 121, on complying with the terms of the preceding for the construction of railways, a company may obtain powers and be incorporated by a certificate from the Board of Trade; but the opposition of a canal or railway company stops the proceedings. Such company may not issue shares unless at least one-fifth of the amount of each share be paid up; nor may any money be borrowed until one-half be actually paid up; nor may they pay interest on shares out of any money raised by calls or loans. A schedule gives the rate of maximum charges, which is 3*d.* per mile for first-class passengers, 2*d.* for second-class, and 1½*d.* for third-class passengers.

And by 33 & 34 V. c. 19, these acts of 1864 have been amended.

By s. 3, any railway or canal company desiring to be heard against any application for a certificate under the acts of 1864, can lodge a notice of opposition at the Board of Trade, and subject to a provisional certificate as in the act mentioned, but the Board of Trade may grant, nevertheless, a provisional certificate as if such provisional certificate was a certificate settled by the Board of Trade, where no notice of opposition had been lodged. But the Board of Trade is obliged, as soon as convenient, to introduce a bill, in order to obtain an act to confirm the provisional certificate.

Regulations of Railways Act, 1873.—By 36 & 37 V. c. 48, her Majesty is empowered to appoint not more than three commissioners to carry into effect 17 & 18 V. c. 31. One must be experienced in law, and another in railway business. Two assistant commissioners may also be appointed, and the lord chancellor can dismiss for inability or misbehaviour. By s. 5, the jurisdiction under 17 & 18 V. c. 31, is transferred to the commissioners, who are not to be interested in any railway or canal stock, and who are to devote their whole time to the duties of their office. The powers and duties of the Board of Trade, under 26 & 27 V. c. 92, are transferred to the commissioners, and by s. 11, 17 & 18 V. c. 31, s. 2, is explained as to through traffic. The commissioners have power to decide what through rate is reasonable, and can entertain a complaint made by any public corporation. Every railway company is obliged to keep at every station a book showing the rates for carriage of traffic, and the commissioners may fix terminal charges. Each commissioner is to be paid not more than £3,000 a-year, and each assistant commissioner £1,500 a-year. A reference to the act will be necessary to understand fully the powers and duties of the commissioners. By 36 & 37 V. c. 76, returns are to be made to the Board of Trade by railway companies, under a penalty of £5 a day, and by coroners of every person on whom they have held an inquest, whose death has arisen from an accident on a railway.

II. STAGE-COACHES.

By 5 & 6 V. c. 79, no stage-coach to carry a greater number of passengers than it is constructed to carry; that is, so as to allow upon fit and proper seats a space on an average of sixteen inches to each. Children under five, sitting on the lap of a person, not considered as passengers.

By 2 & 3 W. 4, c. 120, two children, not in the lap, though under seven, to count as one passenger. In words at length, and in letters one inch in height, and in a colour different from the ground, must be painted the christian and surname of at least *one* proprietor, and the names of the extreme places to and from which a carriage is licensed to travel; also must be painted, in like conspicuous manner, on the back of the carriage, the number of inside or outside passengers allowed to be carried; penalty for omission, or suffering any of the said particulars to remain defaced or obliterated, £5.

Neither driver nor guard counted in number of passengers.

Justices, road surveyors, constables, stamp officers, and passengers, authorized to cause carriages and luggage to be measured, and number of passengers to be counted; and may require a toll-gate keeper to count passengers and measure the luggage, and sign a memorandum thereof. Penalty on proprietor, driver, or toll-gate keeper, refusing, £5.

Penalties on Drivers and Guards.—If the *driver* of any stage carriage drawn by three or more horses quit the box without delivering the reins to a proper person, or a person being placed at the horses' heads; or permit any person to drive; or quit the box without reasonable cause and for a reasonable time; or suffer any plate to be concealed, so as not to be distinctly legible; or if the *guard* discharge fire-arms unnecessarily; or if the driver or guard neglect to take care of the luggage, or ask more than the proper fare; or neglect to account to employer for moneys received; or assault or use abusive language to any person travelling or about to travel, or having travelled as passenger, or any person attending on or accompanying such passenger,—in each of these cases the offender to forfeit £5.

If the driver or guard, or any person employed about the carriage, through *intoxication, negligence, wanton or furious driving*, or any other misconduct, endanger passengers or their property, or the profits of the owner of the carriage, to forfeit £5. Owners are liable for penalties, where the driver or guard is not known or cannot be found.

III. HACKNEY AND STAGE CARRIAGES IN THE METROPOLIS.

By 1 & 2 W. 4, c. 22, hackney carriage includes every carriage, except a stage-carriage, or a carriage impelled by the power of

steam or otherwise than by animal power, with two or more wheels, which is used for the purpose of standing or plying for hire, at any place within the distance of ten miles from the General Post Office in the city of London. Metropolitan stage-carriage includes every stage-carriage, except such as, on every journey, go to or from some place beyond the distance of ten miles from the General Post Office.

"Metropolitan Stage-Carriage" to be inscribed on every stage-carriage, and the number of the stamp-office plate, and the number of passengers to be carried, painted or affixed thereon, both inside and outside, under a penalty not exceeding 20*s*.

Distance, Drivers, and Penalties.—Drivers may ply on Sundays, subject to the same liabilities as on other days. Persons refusing to pay the driver, or compensate him for loss of time in summoning for the same, or to satisfy him for damage caused to his carriage, may be imprisoned one calendar month. Drivers refusing to go, or exacting more than their legal fare, or not travelling with proper expedition, subject to a penalty of 40*s*. Agreements to pay more than legal fare not binding, and the excess paid may be recovered, and the driver fined 40*s*. for his extortion. For a stated sum, the driver may agree to drive any distance at discretion, and is liable to a penalty of 40*s*. for demanding more than sum agreed upon, though less than the legal fare. Deposit to be made for carriages *waiting;* refusing to wait, or account for the deposit, or going away before the time has expired for which the deposit was made, a penalty of 40*s*. *Check-strings* to be provided, and while driving to be held by the driver, under a penalty of 20*s*. Driver not to permit any person to ride in, upon, or about any carriage, without the express consent of the person hiring the same, under penalty of 20*s*. Plying or standing with carriage across any street, passage, alley, or alongside any other carriage, two in a breadth (except in Palace Yard), or within eight feet of the kerbstone; or feeding the horses in the street, except corn out of a bag, or hay from the hand; or wantonly obstructing any private coach or other carriage; or in a forcible and clandestine manner taking the fare from any other driver,—in all these cases, the penalty on the proprietor, driver, or waterman offending is 20*s*. On every standing, a clear space of ten feet to be left between every four carriages; penalty on carriage after the fourth not observing the rule, 20*s*. Carriages left unattended at places of public resort may be driven away by any peace officer or watchman, and the driver fined 20*s*. Endangering any person by *intoxication, wanton and furious driving;* or using abusive and insulting language, or being guilty of other rude behaviour, subjects any proprietor, driver, or waterman, to a penalty of £3, and the license may be revoked. Justices may order compensation to drivers, &c., for loss of time in attending to answer complaints not substantiated against them.

By 6 & 7 V. c. 86, proprietor of every metropolitan stage carriage is to have the particulars painted on it, and also a table of fares to be demanded of passengers. The registrar appointed under the act can grant licenses to proper persons to act as drivers of hackney carriages, &c. A stamp duty of 5*s.* on every license, and a penalty on persons acting without license of £5. Persons applying for a license must sign a requisition for the same; and particulars of license to be entered in a book at the registrar's office, and notice to be given by drivers, &c., of change of abode.

Any driver or conductor guilty of furious driving, or carelessly causing any hurt or damage to person or property of passenger, or being drunk during his employment, or using insulting language or gesture, to forfeit £3, or be committed to prison, if the magistrate think fit, for two months. Plying elsewhere than at the place appointed, loitering in the street, or obstructing the thoroughfare, or stopping on the usual crossing of foot passengers, or refusing a fare without just cause, or deceiving any person as to the route or destination of the carriage, or allowing passenger (unless the carriage is hired by him) to ride on the driving-box; or driver or conductor persisting to smoke while acting in such capacity, after objection taken by a passenger,—for each of these offences a penalty of 20*s.*

The commissioners of police can appoint standings of hackney carriages, and make such regulations as they may think fit; penalties on drivers wilfully disregarding such regulations, 40*s.* Carriages are not to ply for hire opposite the General Post Office.

City of London and Borough of Southwark.—The court of aldermen may appoint standing places in the city and borough for carriages, regulate the number of carriages, the distances at which they shall stand from each other, the hours of plying for hire, and make regulations for the drivers and persons having the management of the carriages; such regulations of the court not to be contrary to the provisions of this act, and, prior to being carried into effect, to be inserted in the *Gazette*, and two or more newspapers, and hung up for inspection in the town clerk's office; penalty for infringing regulations of the court not to exceed £5.

Licenses, Fares, &c.—By 16 & 17 V. c. 33, any person desirous of obtaining a license to keep, use, and let to hire a stage or hackney carriage, must apply in writing to the commissioners of the police of the metropolis, who, if, on inspection, the carriage is found fit and in proper condition for public use, shall grant a certificate, specifying the number of persons to be carried in such carriage. Upon the production of such certificate at the office of Inland Revenue a license will be granted. After grant of license, police may inspect carriages, and, if unfit for use, or the horses, license may be suspended. Penalty for using them after notice of suspension, £3 each day.

By s. 4, the *fares*, within and not exceeding one mile, sixpence;

and after, the rate of sixpence for every additional mile or part of a mile. For any *time* not exceeding one hour, two shillings. Where a fare is calculated according to distance, and the driver is required to stop on the way, a further sum of sixpence is to be paid for every quarter of an hour he shall have been so stopped. No *back fare* to be taken or demanded.

For carriages drawn by *two horses* the charge is *one-third* more than the preceding rates and fares.

Fares are to be paid according to distance or time, at the option of the hirer, to be expressed at the commencement of the hiring; if not otherwise expressed, the fare to be paid according to distance. For a fare to be paid according to time, no driver will be compellable to hire his carriage after eight o'clock in the evening, or before six o'clock in the morning. Two children under ten years of age to be counted as one adult person. When more than two persons shall be carried inside any hackney carriage, with more *luggage* than can be carried inside the carriage, a further sum of twopence for every package carried outside the said carriage is to be paid by the hirer in addition to the fare.

The amount of fare according to distance and time, which may be legally demanded, is to be distinctly painted both on the inside and outside of each hackney carriage. The driver is also to produce a book of fares when required. Tables of distances and fares to be erected at the several standings at the option of the commissioners of police.

No driver shall be required to drive more than *six* miles from the place of hiring. When hired by time, no driver shall be required to drive at a faster rate than four miles an hour, unless he is paid an additional 6*d.* for every mile or part thereof, exceeding four miles. A ticket on which is printed the number of the carriage, is to be delivered by the driver at the time of hiring. The number of persons to be carried is to be painted on the carriage. Any reasonable quantity of luggage is to be carried without additional charge.

Property left in a carriage is to be deposited by the driver at the police office, within twenty-four hours, or in default, a penalty of 40, or one month's imprisonment. Any property found in a carriage by a passenger is to be given up to the driver or conductor, under a penalty of £10, or a month's imprisonment, same as in case of driver. Property not claimed within a twelvemonth to be disposed of, and the proceeds paid to the receiver-general of Inland Revenue.

Persons to be appointed to enforce good order at the stands.

Lamps are to be placed inside the stage carriages.

No printed bills to be put inside the carriage so as to obstruct light or ventilation.

Drivers who fail to abide by the regulations will be liable to a penalty of 40*s.* for every offence.

When disputes arise the hirer may require the driver to drive to the nearest police court, if the magistrate be sitting; if otherwise, to the nearest police station.

By s. 16, no person is allowed to carry about on any carriage, or on horseback, or on foot, in any thoroughfare or public place, to the obstruction or annoyance of the inhabitants or passengers, any *picture, placard, notice, or advertisement*, whether written, printed, or painted upon, or posted, or attached to any part of such carriage, or any board, "or otherwise." Penalty, 40*s.*, or one month's imprisonment.

The limits of this act include every part of the metropolitan police district and city of London, and is to be construed with former acts, except as to application for license.

As a substitute for *back fares*, a subsequent act, the 16 & 17 V. c. 127, s. 13, provides that 1*s.* *per mile* may be charged for every mile, or part of a mile, beyond the distance of four miles from Charing Cross, provided a carriage be discharged beyond that distance. By s. 14, when more than two persons are conveyed by a carriage drawn by one horse, 6*d.* for *each* person above two may be charged for the whole hiring in addition to the fare. When a carriage is hired by *time*, 6*d.* to be paid for every fifteen minutes, or portion of fifteen minutes, above one hour.

By s. 16, if carriage be *withdrawn from hire for two successive days*, or for any two days in one week, without just cause, of which the magistrate is judge, the proprietor liable to a penalty of 20*s.* for each carriage withdrawn; the license may be suspended or recalled at discretion of commissioners of police.

By 30 & 31 V. c. 134, s. 17, every hackney carriage plying for hire is to be provided with at least one lighted lamp during a portion of time between sunset and sunrise, to be fixed by the commissioners of police of the metropolis, and is to have such plate fixed to it as the Commissioners of Police may from time to time direct; penalty 40*s.* By s. 26 of the same act, no fare is to be less than 1*s.* By 32 & 33 V. c. 115, which relates to carriages within the metropolitan district, the Home Secretary is empowered to grant hackney carriage licenses, under such conditions, and at such price, and in such form as he may think fit. Licenses to be in force for one year, if not revoked, and a sum not exceeding £2 2*s.* is to be paid in respect of such license to the receiver of the metropolitan police, to be carried to the account of the metropolitan police fund. If any unlicensed carriage plies for hire, the owner is liable to a penalty not exceeding £5 per day; and if any unlicensed carriage is found on any stand within the metropolitan district, the owner is liable to a penalty not exceeding £5 for each time, and the driver is liable also to a like penalty, unless he proves that he was ignorant that the carriage was unlicensed. Any such carriage not being distinguished as for the time being is prescribed by the *Home* Secretary, is to be deemed to be an unlicensed carriage.

The driver of a hackney carriage must also be licensed, and the owner of the carriage and the driver is liable to a penalty not exceeding 40s. if the driver is not licensed.

The Home Secretary may from time to time, by order, make such regulations as he may think fit for all the purposes mentioned in the 9th section of the act, but the regulations are subject to the following restrictions :— In fixing a stand for hackney carriages in the city of London, the consent of the lord mayor and aldermen is required. No hackney carriage can be compelled to take any person for a distance greater than six miles, and no carriage is to ply for hire without having a lighted lamp fixed outside during such portion of time between sunset and sunrise as is from time to time prescribed ; penalty for the breach of regulations, not exceeding 40s. The Home Secretary may appoint the commissioner of the metropolitan police, or such other person as he may think fit, to grant licenses. All penalties may be recovered summarily.

IV. REGULATION OF LOCOMOTIVES.

The general turnpike and highways acts not applying to the class of locomotives propelled by steam or other power in respect of tolls, carriages, and breadth of tire of wheels, the deficiency was met in 1861 by 24 and 25 V. c. 70. Every locomotive propelled by *any power*, containing within itself the machinery for its own propulsion, such a toll for every two tons' weight or fractional part of that weight, as such locomotive shall weigh, as shall be equal to the toll now payable for every horse drawing any waggon or carriage, with wheels of a width similar to those of such locomotive. Or in the case of a toll charged on the horse or horses drawing any such waggon or carriage, then such a toll for every two tons or fractional part that such locomotive shall weigh as shall be equal to one horse.

No locomotive to exceed seven feet in width or twelve tons in weight, under a penalty of £5. But locomotives of greater width and weight may be used with the permission of the lord mayor within the limits of the metropolis, or in any parliamentary borough of Scotland, and in other cities and boroughs, with the permission of the municipal corporation, or of the commissioners or surveyors of streets, turnpikes, or roads, over which it may be proposed to work the locomotive. Such permission, however, may be revoked by the Secretary of State, and the use of a locomotive likely to be destructive to highways, or dangerous to the public, prohibited. Damage caused by locomotives to any road, bridge, navigable river, or canal, to be made good by the owners. Locomotives propelled by steam to consume their *own smoke*, under a penalty not exceeding £5.

The sections in this act *repealed by* an act of 1865 have been

omitted, and the 28 & 29 V. c. 83, further regulates the use of locomotives on turnpikes and other roads for agricultural purposes. Every locomotive propelled by steam or other than animal power, on any turnpike or public highway, to be worked according to the following rules:—1. At least three persons to be employed to conduct such locomotive, and if more than two waggons or carriages be attached, an additional person to be employed to take charge; 2. One of such persons, while any locomotive is in motion, to precede the locomotive on foot by not less than sixty yards, and to carry a red flag constantly displayed, to warn the riders and drivers of horses of the approach of the locomotive, and signal the driver when necessary to stop, and assist horses, and carriages drawn by horses, passing the same; 3. The drivers of locomotives to give as much space as possible for the passing of other traffic; 4. The whistle of locomotive not to be sounded for any purpose whatever: nor the cylinder tops to be opened within sight of any person riding, driving, leading, or in charge of a horse upon the road; nor the steam be allowed to attain such pressure as to exceed the limits fixed by the safety-valve, so that no steam blow off when the locomotive is upon the road; 5. Every locomotive to be instantly stopped, on the person preceding the same, or any other person with a horse, or carriage drawn by a horse, putting up his hand as a signal to require such locomotive to be stopped; 6. Any person in charge of locomotive to provide two efficient lights to be affixed conspicuously, one at each side, on the front of the same between the hours of one hour after sunset and one hour before sunrise. Non-compliance with any of these provisions subjects to summary conviction before two justices, and a penalty not above £10 payable by the owner, but recoverable in whole or part from the conductor, if incurred through his negligence or wilful default, s. 3. Speed of locomotive limited to four miles an hour, or two miles in a town or village. Locomotive not to exceed fourteen tons in weight or nine feet in width. Restrictions as to the use of steam-engines within twenty yards of road not to apply to locomotives used for ploughing purposes. Power given to local authorities to make order of passage of locomotive through towns. Penalty on violating such order, £10 or less.

V. SHIPS PASSENGER ACTS.

In 1852 an act was passed regulating the carriage of passengers and ships, and another in 1853, but the first of these acts has been entirely repealed and the second nearly so.

The 18 & 19 V. c. 119, was passed in 1855. It embodies the chief provisions of the former act, but allows rather more space for passengers, provides more boats for large ships, and makes better provision for enforcing contracts. It does not extend to cabin passengers, but cabin passengers are only such as mess

with the master, and pay at least 30*s.* weekly during the voyage. Extends to every passenger ship on any voyage from Britain, Ireland, or the Channel Islands, to any place out of Europe, not within the Mediterranean Sea; except ships of war or transports.

Facilities to be given by master to the proper officers to inspect any ship, whether a passenger ship or not, intended for the carriage of passengers. Any person found on board fraudulently attempting to obtain a passage, or persons aiding such attempt, liable to a penalty of £5, or imprisonment; and no passenger ship to clear out without a certificate of having complied with the provisions of the act. No ship to carry passengers on more than two decks, nor be allowed to clear out with a greater number of persons on board than in the proportion of one person to every two tons of the registered tonnage. Penalty for a greater number of either persons or passengers, for each not less than £5, or above £20. Two children under twelve years of age to be reckoned as one person or passenger, but children not above one year old not computed.

For *light and air*, the passengers at all times (weather permitting) to have free access to and from between decks by the hatchway appropriated for their use. Penalty on owner for failure, not above £50 nor less than £20. Two boats to be provided for every ship of less than 200 tons; three boats, if 200 tons and upwards; four boats, if of 400 tons. One boat to be a long boat, and one a life-boat, with life-buoys, &c. Each ship to be manned with a proper complement of seamen. Gunpowder, vitriol, guano, green hides or any other article likely to endanger life or health, prohibited as cargo, and no part of the cargo to be on deck.

Dietary scale for each passenger (exclusive of any providings by the passengers themselves), of water at least three quarts daily; of provisions after the rate per week of three-and-a-half pounds of bread or biscuit, not inferior in quality to navy biscuit; one pound of wheaten flour, one-and-a-half pound of oatmeal, two ounces of tea, one pound of sugar, and two ounces of salt. The water to be pure, and the provisions sweet and wholesome. Such issue of provisions to be made daily before two o'clock in the afternoon, as near as possible in the proportion of one-seventh part of the weekly allowance; first issue to be made on the day of embarkation to all passengers on board, and articles to be in a cooked state. Other articles of diet may be substituted by the master, in a fixed proportion, provided the substituted articles be set forth in the contract tickets of the passengers, s. 35. Emigration commissioners may substitute other articles of food after notice in the *London Gazette*, s. 37.

In every ship with above 100 passengers, a passenger-steward, approved by the emigration officer, to be appointed, to be employed in messing and serving out provisions, and maintaining order and cleanliness. Also a cook and cooking apparatus. In *foreign* passenger ships interpreters to be provided, ss. 38, 40.

No passenger ship, having fifty persons on board, and the computed voyage exceeding eighty days by sailing vessels, or forty-five by steamers, or having 100 persons on board, whatever the length of the voyage, and not bound to *North America*, allowed to proceed on the voyage without a duly qualified medical practitioner on board. Ships bound to North America, and allowing fourteen in lieu of twelve feet superficial space for each passenger, may clear without medical practitioner. But no vessel to clear without medical man, if passengers exceed 500, s. 42.

Passengers may be re-landed in case of sickness, and are in such case entitled to recover their passage-money. If passages not provided by owners, according to contract, passage-money to be returned, with compensation. Subsistence money, at the rate of one shilling per day for each passenger, to be paid by the owners, in case the day fixed for sailing be deferred.

Passengers to be maintained and lodged during the voyage, and for forty-eight hours after arrival; ships putting back, to replenish provisions, medical stores, &c.

Surgeon, or in his absence the master, may exact obedience to rules and regulations, and persons obstructing liable to a penalty. Abstracts of the act to be prepared by commissioners, and two copies posted between decks. Penalty on master for neglect not above 40*s.*; or on any person displacing or defacing the same a like penalty. Sale of spirits on board prohibited under penalty of £20, or not less than £5, s. 62.

No person to act as a passage-broker without a license; penalty not less than £20, nor above £50. Licenses obtained at petty sessions of the district where the applicant has his office. Fraudulently altering contract ticket, or inducing any one to part with it, penalty not less than £2, nor above £5.

Certain exceptions from the provisions of the act in respect of colonial voyages, that is, voyages from one colony to another, and not exceeding three weeks in computed duration. Governors of British possessions abroad may adopt the act with certain exceptions.

The act of 1855 was amended in 1863 by 26 & 27 V. c. 51, which defines a passenger vessel to signify every description of sea-going vessel, British or foreign, carrying fifty passengers, or greater number than in the proportion of one adult to every thirty-three tons of registered tonnage, if propelled by sails, or than one adult to every twenty tons if propelled by steam. Mail steamers carrying other than cabin passengers subject to the act. Cabin passengers to be included in passenger list, s. 6. Penalty on fraudulent attempt to get a passage without consent, or aiding a person therein, extended from £5 to £20. Horses and cattle may be conveyed under specified conditions, s. 8. The issue of six ounces of lime-juice to be confined to the period within the tropics, or other periods of the voyage to be at the discretion

the medical practitioner. Soft bread to be baked on board for other bread-stuffs of the dietary scale. Passengers landed on account of sickness, passage-money recoverable on surrender of contract ticket; but only half passage-money recoverable by cabin passengers, s. 14. Forfeiture of ship if master proceeds to sea without certificate of clearance, and be dealt with according to customs law. In case of wreck or damage near United Kingdom, passengers to be provided with passage by some other vessel, and maintained in the mean time.

In 1872, 35 & 36 V. c. 73, was passed to amend the Merchant Shipping acts. The duties of the commissioners of customs with respect to measurement of ships, and the powers of the Secretary of State, are transferred to the Board of Trade, and the duty of the commissioners of customs with respect to registry of ships are transferred to the registrar-general of seamen. Passenger steamers are to be surveyed once in every year. The owner of home-trade ships, or his agent, can enter into time agreements in forms to be sanctioned by the Board of Trade, with individual seamen to serve in any one or more ships belonging to him. Provided that a duplicate of such agreement be forwarded to the registrar-general of shipping within forty-eight hours after it has been entered into.

Excisable Articles.—The 9 G. 4, c. 47, enacts that the master of any packet or vessel employed in carrying passengers from one part of the United Kingdom to another is to be licensed by the commissioners of excise, or (5 W. 4, c. 75) by *any officer* of excise authorized to grant licenses, to retail *foreign wine, strong beer, cider, perry, spirituous liquors, and tobacco,* such license to be in force till the 5th of July following; and the master obtaining the license to produce a certificate of his nomination by the owner of the vessel; the license is transferable by endorsement; s. 1. Duty to be paid by the owners on obtaining such license £1; s. 2. Penalty for selling wines, &c., without license, for every offence, £10; s. 3.

CHAPTER XXIII.

Pawnbrokers.

PAWN is a pledge or security for a loan of money, which becomes forfeited unless it be redeemed by the repayment of the money advanced with interest within a period fixed by law. A pawn cannot be taken in an execution against a pawnbroker, nor can it be used without the consent, express or implied, of the owner,

Lit. Rep. 332. A pawnbroker refusing to deliver up goods pledged on tender of the money may be *indicted*, because, being secretly pledged, it may be impossible to prove a deposit for want of witnesses, if an action of trover be only brought for them. 3 Salk. 268.

In 1872 an act (35 & 36 V. c. 93) was passed for consolidating the acts relating to pawnbrokers in Great Britain, but it does not extend to Ireland. The act, after defining certain terms, extends its provisions to keepers of any shops for the purchase or sale of goods, with an understanding, either expressed or implied, that such goods may be afterwards redeemed or repurchased on any terms. This act extends to the executors or administrators of deceased pawnbrokers. The act applies to every loan by a pawnbroker of 40*s.* or under, to every loan by a pawnbroker of above 40*s.* and not above £10, except as in the act otherwise provided, in relation to cases where a special contract respecting the terms of the loan (as authorised by the act) is made between the pawner and the pawnbroker at the time of pawning. Nothing in the act shall apply to a loan by a pawnbroker of above £10, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the loan or pledge. And notwithstanding anything in the act, a person is not to be deemed a pawnbroker by reason only of his paying, advancing, or lending on any terms, any sum or sums of above £10, s. 10. Nothing in the act is to apply to a loan made by a pawnbroker before the commencement of the act, or to the pledge on which the loan is made, or to the pawnbroker or pawner in relation to the loan or pledge, s. 11.

A pawnbroker is to keep such book and documents as are described in the third schedule to the act hereafter mentioned, and from time to time as occasion requires is to enter therein the particulars indicated in that schedule. If he fails to do so he is guilty of an offence against the act. He is always to keep exhibited in large characters over the outer door of his shop, his christian name and surname, with the word pawnbroker, and he is to keep placed in a conspicuous part of his shop (so as to be legible by every person pawning or redeeming pledges, standing in any box or place provided in the shop for persons pawning or redeeming pledges) the same information as is by the rules of the third schedule to the act required to be printed on pawn-tickets.

A pawnbroker, on taking a pledge in pawn, is to give to the pawner a pawn-ticket, and is not to take a pledge in pawn unless the pawner takes the pawn-ticket. A pawnbroker may take profit on a loan on a pledge at a rate not exceeding that specified in the fourth schedule to the act hereafter mentioned. A pawnbroker may demand the charges specified in the same schedule; he is not in respect of a loan on a pledge to take any profit, or demand or take any charge or sum whatever other than those specified in the same schedule; he is also, if required, at the time of redemption to give a receipt

for the amount of loan and profit paid to him. And such receipt is not to be liable to stamp duty unless the profit amounts to 40*s.* or more. Every pledge is to be redeemable within twelve months from the day of pawning, exclusive of that day, and there are to be added to that year of redemption seven days of grace, within which every pledge (if not redeemed within the year of redemption) is to continue to be redeemable. A pledge pawned for 10*s.* or under, if not redeemed within the year of redemption and days of grace, is at the end of the days of grace to become the pawnbroker's absolute property. A pledge pawned for above 10*s.* is further to continue redeemable until it is disposed of as in the act provided, although the year of redemption and days of grace are expired. A pledge pawned for above 10*s.* is, when disposed of by the pawnbroker, to be disposed of by sale by public auction, and not otherwise, and the regulations in the fifth schedule to the act are to be observed with reference to the sale. A pawnbroker may bid for and purchase at a sale by auction made or purporting to be made under this act a pledge pawned with him. At any time within three years after the auction at which a pledge pawned for above 10*s.* is sold, the holder of the pawn-ticket may inspect the entry of the sale in the pawnbroker's book and in the filled-up catalogue of the auction (authenticated by the signature of the auctioneer). Where a pledge pawned for above 10*s.* is sold, and appears from the pawnbroker's book to have been sold for more than the amount of the loan and profit due at the time of sale, the pawnbroker is on demand to pay the surplus to the holder of the pawn-ticket, in case the demand is made within three years after the sale, the necessary costs and charges of the sale being first deducted. If on any such demand it appears from the pawnbroker's book that the sale of a pledge or pledges has resulted in a surplus, and that within twelve months before or after that sale the sale of another pledge or other pledges of the same person has resulted in a deficit, the pawnbrober may set off the deficit against the surplus, and is liable to pay the balance only after such set off.

A pawnbroker may, however, make a special contract with the pawner, in respect of a pledge on which the pawnbroker makes a loan of above 40*s.*, but the pawnbroker at the time of the pawning is to deliver to the pawner a special contract pawn-ticket signed by the pawnbroker. A duplicate of the special contract pawn-ticket is to be signed by the pawner.

The holder for the time being of a pawn-ticket is to be presumed to be the person entitled to redeem the pledge. A pawnbroker is not (except as in the act provided), bound to deliver back a pledge unless the pawn-ticket for it is delivered to him. Where a pledge is destroyed or damaged by or in consequence of fire, the pawnbroker is nevertheless liable, on application within the period

during which the pledge would have been redeemable, to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan. Any person claiming to be the owner of a pledge, but not holding the pawn-ticket, or any person claiming to be entitled to hold a pawn-ticket, but alleging that the same has been lost, mislaid, destroyed, or stolen, or fraudulently obtained from him, may apply to the pawnbroker for a printed form of declaration, which the pawnbroker is to deliver to him. If the applicant delivers back to the pawnbroker the declaration duly made before a justice by the applicant and by a person identifying him, the applicant is thereupon to have, as between him and the pawnbroker, all the same rights and remedies as if he produced the pawn-ticket: Provided that such a declaration is not to be effectual for that purpose, unless it is duly made and delivered back to the pawnbroker not later than on the third day after the day on which the form is delivered to the applicant by the pawnbroker (exclusive of the day or days on which the pawnbroker is prohibited from carrying on business).

A pawnbroker is guilty of an offence against the act if he takes an article in pawn from any person appearing to be under the age of twelve years, or to be intoxicated, or purchases or takes in pawn or exchange a pawn-ticket issued by another pawnbroker, or employs any servant, or apprentice, or other person, under the age of sixteen years to take pledges in pawn, or carries on the business of a pawnbroker on Sunday, Good Friday, or Christmas-day, or a day appointed for public fast, humiliation, or thanksgiving, or under any pretence purchases, except at public auction, any pledge while in pawn with him, or suffers any pledge while in pawn with him to be redeemed with a view to his purchasing it, or makes any contract or agreement with any person pawning, or offering to pawn, any article, or with the owner thereof, for the purchase, sale, or disposition thereof within the time of redemption, or sells, or otherwise disposes of any pledge pawned with him, except at such time and in such manner as authorized by the act.

If a pawnbroker knowingly takes in pawn any linen, or apparel, or unfinished goods or materials intrusted to any person to wash, scour, iron, mend, manufacture, work up, finish, or make up, he is guilty of an offence against this act, and is liable, on conviction thereof in a court of summary jurisdiction, to forfeit a sum not exceeding double the amount of the loan (which forfeiture is to be paid to the overseers of the poor of the parish where the offence is committed, for the use of the poor thereof), and the pawnbroker is likewise to restore the pledge to the owner thereof in the presence of the court or as the court directs.

Every pawnbroker is yearly to take out from the commissioners of Inland Revenue an excise license for carrying on his business, on which license there shall be charged and paid for the use of the

Majesty, her heirs and successors, an excise duty of £7 10*s*. Every license is to be dated on the day on which it is issued, and shall determine on the 31st day of July. A separate license is to be taken out and paid for by a pawnbroker for each pawnbroker's shop kept by him. If a person acts as a pawnbroker without having in force a proper license, he is for every such offence liable to an excise penalty not exceeding £50. All the provisions contained in any act relating to excise licenses, duties, or penalties, and in force at the commencement of the act, are, as far as the same are applicable, to have full effect with respect to the license and duty and penalty aforesaid. If a pawnbroker is convicted on indictment of any fraud in his business, or of receiving stolen goods, knowing them to be stolen, the court before which he is convicted may if it thinks fit direct that his license shall cease to have effect. After the passing of the act, a pawnbroker's license is not to be granted to any person except on the production and in pursuance of the authority of a certificate granted under the act, save that it is not to be necessary for any person, being at the commencement of the act a licensed pawnbroker, or for his executors, administrators, assigns, or successors, to obtain such a certificate. A person intending to apply for the first time for a certificate under the act is, twenty-one days at least before the application, to give notice, by registered letter sent by post, of his intention, to one of the overseers of the poor of the parish or place in which he intends to carry on business, and to the superintendent of police of the district, and in the notice is to set forth his name and address; and he is within twenty-eight days before the application to cause a like notice to be affixed and maintained between ten o'clock in the morning and five o'clock in the afternoon of two consecutive Sundays on the principal door or one of the doors of the church or chapel of the parish or place, or if there is none, then on some other public and conspicuous place in the parish or place. An application for a certificate is not to be refused unless the applicant has failed to produce satisfactory evidence of good character, or unless the shop in which he intends to carry on the business of a pawnbroker, or any adjacent house or place owned or occupied by him, is frequented by thieves or persons of bad character, or unless he has not complied with the last preceding regulation.

If a pawnbroker or other person is guilty of an offence against the act, in respect whereof a specific forfeiture or penalty is not prescribed by the act, he is liable, on conviction thereof in a court of summary jurisdiction, to a penalty not exceeding £10. If any person utters, produces, shows, or offers to a pawnbroker a pawnticket which the pawnbroker reasonably suspects to have been counterfeited, forged, or altered, the pawnbroker may seize and detain the person and the ticket, and is to deliver him or it as soon as may be into the custody of a constable.

THE THIRD SCHEDULE ABOVE REFERRED TO.

Forms of Books and Documents.

I.—PLEDGE BOOK.

of Pawnbroker,
of 1872.

For Date of Redemption.	For Profit Charged.	For Amount of Loan. £ s. d.	For No. of Pledge in the Month.	For Name of Pawner.	For Address of Pawner.	For Name of Owner, if other than Pawner.	For Address of Owner, if other than Pawner.	For List of Articles Pawned, as described on Pawn-Ticket.

Rule.

All entries in the last five columns respecting each pledge shall be made on the day of the pawning thereof, or within four hours after the end of that day.

II.—PAWN-TICKET.

A.—*For loan of ten shillings or under.*

Pawned with [*John Smith*,] Pawnbroker,
[236, *High Street, Whitechapel*,]
this [17*th*] day of [*March*, 1873,]
by [*Henry Williams*,] of [25, *King Street, Holborn*,]
for the sum of [*ten*] shillings,
[*One Black Frock Coat*].

The Pawnbroker is entitled to charge—
For this ticket . . . . . One halfpe
For profit on each two shillings or part of two shillings lent on this pledge for not more than one calendar month. . . One halfpe

And so on at the same rate per calendar month.

After the first calendar month, any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month, will be charged as one month.

This pledge must be redeemed within twelve calendar months and seven days from the date of pledging. At the end of that time it becomes the property of the Pawnbroker.

If the pledge is destroyed or damaged by fire, the Pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost, mislaid, or stolen, the pawner should at once apply to the Pawnbroker for a form of declaration to be made before a magistrate, or the Pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

B.—*For loan of above ten shillings and not above forty shillings.*

Pawned with [*John Smith,*] Pawnbroker,
[236, *High Street, Whitechapel,*]
this [18*th*] day of [*March*, 1873,]
by [*Henry Williams,*] of [25, *King Street, Holborn,*]
for the sum of [*eleven*] shillings,
[*One Grey Tweed Coat*].

The Pawnbroker is entitled to charge—

For this ticket	One penny.
For profit on each two shillings or part of two shillings lent on this pledge for not more than one calendar month . .	One halfpenny.

And so on at the same rate per calendar month.

After the first calendar month, any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month, will be charged as one month.

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the Pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the Pawnbroker's books on payment of one penny, and receive any *surplus* produced by the sale. But

deficit on sale of one pledge may be set off by the Pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire, the Pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid, the pawner should at once apply to the Pawnbroker for a form of declaration to be made before a magistrate, or the Pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

C.—*For loan of above forty shillings.*

Pawned with [*John Smith,*] Pawnbroker,
[236, *High Street, Whitechapel,*]
this [19*th*] day of [*March*, 1873,]
by [*Henry Williams,*] of [25, *King Street, Holborn,*]
for the sum of [*fifty*] shillings.
[*One Shooting Coat.*]

The Pawnbroker is entitled to charge—

For this ticket	One penny.
For profit on each two shillings and sixpence, or part of two shillings and sixpence lent on the pledge for every calendar month or part of a calendar month . . .	One halfpenn

If this pledge is not redeemed within twelve calendar months and seven days from the day of pledging, it may be sold by auction by the Pawnbroker, but it may be redeemed at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the Pawnbroker's books on payment of one penny, and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the Pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire, the Pawnbroker will be bound to pay the value of the pledge after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan.

If this ticket is lost or mislaid, the pawner should at once apply to the Pawnbroker for a form of declaration to be made before a magistrate, or the Pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him and claims to redeem the same.

III.—Sale Book of Pledges for Loans of above Ten Shillings.

[*Date and place of Sale.*]

[*Name and place of business of Auctioneer.*]

For No. of Pledge as in Pledge-Book.	For Date of Pawning.	For Name of Pawner.	£ s. d. For Amount of Loan.	For Amount for which Pledge sold as stated by Auctioneer.

IV.—Declaration where Pledge claimed by Owner.

Take notice, if this declaration is false, the person making it is punishable as for perjury.

Unless this printed form is taken before a magistrate and declared to, and signed, and delivered back to the Pawnbroker not later than the day of the articles mentioned in it will be delivered to any person producing the pawn-ticket.

I, *A. B.* of in pursuance of The Pawnbrokers Act, 1872, do solemnly and sincerely declare that the article [*or articles*] described below, is [*or are*] my property, and that I believe they are pledged at the shop of

The article [*or articles*] above referred to is [*or are*] the following:—

And I, *C. D.* of in pursuance of the same act, do solemnly and sincerely declare that I know the person now making the foregoing declaration to be *A. B.* of

Declared before me, one of her Majesty's Justices of the peace for the county of [*Middlesex*], this day of

V.—Declaration where Pawn-Ticket lost, &c.

Take notice, if this declaration is false, the person making it is punishable as for perjury.

Unless this *printed form is taken before a magistrate* and

declared to, and signed, and delivered back to the Pawnbroker later than the day of the articles mentio in it will be delivered to any person producing the pawn-ticket

I, *A. B.* of in pursuance of The Pa brokers Act, 1872, do solemnly and sincerely declare that pledged at the shop of Pawnbroker the ar [*or articles*] described below, being property, and rece a pawn-ticket for the same, which has since been by And that the pawn-ticket has not been sold or transferred to person by or to knowledge or belief.

The article [*or articles*] above referred to is [*or are*] the foll ing:—

And I, *C. D.* of in pursua of the same act, do solemnly and sincerely declare that I know person now making the foregoing declaration to be *A. B.*

of

Declared before me, one of her Majesty's Justices of the peace for the county of [*Middlesex*], this day of 187 .

VI.—RECEIPT.

[*Date*].

Received on redemption of pledge No.

Amount of Loan . . . . .

Profit . . . . . .

Total [*A. B.*] Pawnl

VII.—SPECIAL CONTRACT.

Special Contract under Act of Parliament.

Pawned with [*John Smith,*] Pawnbroker,

[236, *High Street, Whitechapel,*]

this [17*th*] day of [*April*, 1873,]

by [*Henry Williams,*] of [25, *King Street, Holbo*

for the sum of [*forty-eight shillings,*]

[*One Marble Clock*].

The following is to be printed on the front or back of th

Terms of the Special Contract.

The Pawnbroker charges—

For this ticket . . . . . .

Profit at the rate per calendar month of .

After the first calendar month, any time not exceeding fourteen days will be charged as half a month, and any time exceeding fourteen days and not more than one month will be charged as one month.

The charge for storage of this pledge will be per calendar month, or any part of a month, in addition to the charges above mentioned.

This pledge is pawned for the period of * months.

After the expiration of that time the pledge may be sold by auction by the Pawnbroker. But it may be redeemed by the pawner at any time before the day of sale.

Within three years after sale the pawner may inspect the account of the sale in the Pawnbroker's books on payment of and receive any surplus produced by the sale. But deficit on sale of one pledge may be set off by the Pawnbroker against surplus on another.

If the pledge is destroyed or damaged by fire, the Pawnbroker will be bound to pay the value of the pledge, after deducting the amount of the loan and profit, such value to be the amount of the loan and profit and twenty-five per cent. on the amount of the loan, unless otherwise agreed upon by the pawner and Pawnbroker.

If this ticket is lost or mislaid, the pawner should at once apply to the Pawnbroker for a form of declaration to be made before a magistrate, or the Pawnbroker will be bound to deliver the pledge to any person who produces this ticket to him, and claims to redeem the same.

(Signed) [*John Smith,*] Pawnbroker.
(Signed) [*Henry Williams,*] Pawner.

THE FOURTH SCHEDULE.

Profit and Charges allowed to Pawnbrokers.

Part I.—Profit on Loan.

A. On a loan of forty shillings or under—	
For any time during which the pledge remains in pawn not exceeding one month, for every two shillings or fraction of two shillings lent	One halfpenny.
For every month after the first, including the current month in which the pledge is redeemed, although that month is not expired, for every two shillings or fraction of two shillings lent	One halfpenny.

Provisoes.

1. If the pledge is redeemed before the end of the first fourteen days after the expiration of any month, the Pawnbroker shall, in respect of those fourteen days, be entitled to take half of the amount which he would be entitled to take for the whole month.

* Not less than three months.

B. On a loan of above forty shillings—

For every month or part of a month for every sum of two shillings and sixpence or fraction of a sum of two shillings and sixpence . . . . . One halfpenny

Part II.—Charge on Pawn-Ticket.

Where the loan is ten shillings or under . One halfpenny
Where the loan is above ten shillings . . One penny.

Part III.—Charge on Inspection of Sale Book.

For the inspection of the entry of a sale . One penny.

Part IV.—Charge on Form of Declaration.

Where the loan is five shillings or under . One halfpenny.
Where the loan is above five shillings . . One penny.

Rule.

This sum is to be paid by the applicant at the time of application.

CHAPTER XXIV.

Auctioneers and Appraisers.

By 8 V. c. 15, the duties on sales by auction were repealed, and previous statutes so far as they related to the collection of the duties. A license is declared necessary for carrying on the business of an auctioneer, for which the sum of £10 is to be paid; the duty to be under the management of the excise, and recoverable under the excise acts: the license is to be renewed ten days at least before the expiration thereof, on the 5th July in every year, under the penalty of £100 for omission, and carrying on the business of an auctioneer without such license; a separate license is requisite to sell plate or other articles.

But certain sales need not be conducted by a licensed auctioneer, namely, goods sold under a distress for less than £20, for rent or tithes, and under the provisions of certain small debts acts.

Before the commencement of an auction, s. 7 requires the auctioneer to suspend in some conspicuous part of the room a ticket or board, containing his full christian and surname and place of residence: and to produce his license to, or deposit £10 with, some officer of excise or customs, or stamps and taxes, who may demand its production; in default he may be arrested at the termination of the sale, and conveyed before a justice, who may commit him *to prison* for any time not exceeding one calendar month, and *this imprisonment* is not to affect any proceedings for the penalty *incurred* for selling without a license. On the production, within

a week, of the license, the deposit of £10 to be returned by the officer.

An auctioneer who has duly paid the license-duty is not liable, in the city of London, to the penalties for acting as a *broker*, without being admitted agreeably to 6 Anne, c. 16.

By 27 & 28 V. c. 56, s. 14, auctioneers are not to deal in or sell excisable commodities except upon licensed premises.

A licensed auctioneer going from town to town in a public stage-coach, and sending goods by public waggons, and selling them on commission, by retail or by auction, is a *trading person*, within the 50 G. 3, c. 41, s. 6, and must take out a hawker's and pedlar's license; so, likewise, a person travelling in this manner, and having packages of books, &c., sent after him by public conveyance, taking rooms at each town, and there selling such books, &c., by retail or by auction, is a trading person, within the seventh section of the same act.

By 8 & 9 V. c. 76, s. 1, every person, except a licensed auctioneer, who for hire exercises the occupation of an appraiser to value property, repairs, and labour, must take out an annual forty-shilling license. Acting without such license, penalty £50.

Auctioneers must be well skilled in their duties; and if their employers sustain any damage through them, an action will lie. They must make amends if they sell the property for less, or in a way contrary to the instructions of their employer.

If an auctioneer pay over the produce of a sale to his employer, after receiving notice that the goods were not the property of such employer, the real owner of the goods may recover the amount from the auctioneer.

Auctioneers cannot become the purchasers of property entrusted to them to sell, at a less value than its real worth, unless they can prove that the owner was acquainted with its real value.

A warranty by an auctioneer, pursuant to instructions as to the soundness or title of the article offered, will not bind him, except made on his *own* responsibility; but to relieve him, he must disclose the name of his employer at the time of sale.

If the owner put the price under a candlestick in the room, which is called a *dumb bidding*, and it is agreed that no bidding shall avail, if not equal to that, it was held to be an actual bidding of so much, to supersede smaller biddings at the auction.

If an auctioneer sell an estate without sufficient authority, so that the purchaser cannot obtain the benefit of his bargain, the auctioneer will be compelled to pay all the costs and loss the buyer may have incurred.

If an auctioneer give credit to a vendee, or take a bill or other security for the purchase-money, it is at his own risk, and the vendor can compel him to pay the money.

An auctioneer writing *the name of the purchaser* in the catalogue, binds *both the buyer and seller to the bargain.*

Unless an auctioneer disclose the name of his principal, an action will lie against him for damages for breach of the contract. But it seems from *Fisher* v. *Marsh*, an action for use and occupation may be maintained by an auctioneer letting land, without *naming his principal* as the contracting party, against a person who has received possession from him, and has occupied, under the contract constituted by his being the highest bidder at the auction. It appeared that races were held at Port Meadow, a common, over which the freemen of Oxford have common rights. In this case the plaintiff, an auctioneer, by the usual posting-bills advertised that he would let by public auction standings for booths on the race-course to the highest bidders. He was acting on behalf of the race committee, and the names of the committee were given. The court of Queen's Bench, in 1865, held that the defendant, to whom a standing for a booth was knocked down at the sale, could not dispute the plaintiff's title to let the ground, he having bought of and been let into possession by the plaintiff.

Where a life interest was sold by auction, "without reserve," the vendor having entered into an agreement with a party to bid £30,000, at which price he was to become the purchaser, unless there should be a higher bidding, but the agreement was not *disclosed*, and the defendant became the purchaser at the price of £50,000; the tenant for life afterwards died, the court of Chancery, holding the transaction tainted with *reserve*, refused a specific performance, *Robinson* v. *Wall*, Jer. Dig. 1848, 15.

Goods sold remain at the risk of the seller, while anything remains to be done by him to ascertain the price; but afterwards the property is changed by the sale, and whether injured or destroyed by fire, or otherwise, it will be at the risk of the buyer.

If a vendor cannot make a good title, and the purchaser's money has been lying idle, the vendor must pay interest to the purchaser. *Babington on Auctions*, c. 5, s. 1.

An auctioneer receiving a deposit, to be paid over on the completion of the purchase, is regarded as a stakeholder, and as such is not liable for interest, even though he may have derived a profit from the use of the money. On the other hand, if the money be lost by his mode of employing it, he will be liable, 1 *Barn. & Adol.* 577.

A clause is usually inserted in the conditions of sale, of forfeiture of the deposit, re-sale, and compensation for loss on re-sale; but there is no doubt that, if this condition were omitted, the vendor would be entitled to retain the deposit, and recover any damage beyond it in case the contract was avoided by the sole default of the purchaser.

When an estate has been generally advertised for sale by auction, and is disposed of by private contract, persons attending for the purpose of becoming purchasers may recover from the seller, or, if

the auctioneer will not disclose the name of the principal, then from him, the expenses of the attendance at the place of sale; hence the common precaution in the advertisement, "*unless previously sold by private contract.*"

A bidder at an auction may retract his bidding any time before the hammer is down, unless this is precluded by the conditions of sale.

Since the 1st of August, 1870, it has not been necessary for any person to take out an excise license as an auctioneer in order to enable him to sell fish by auction upon the sea-shore where the same shall have been first landed, 33 & 34 V. c. 32, s. 5.

II. PUFFING AT AUCTIONS.

If the owner of goods or an estate put up to sale by auction, employ puffers to bid for him, without declaring it, and there is only *one* real bidder, who, by means of the puffers, is induced to purchase at a high price, such purchaser is not compelled to complete the contract, 6 *T. R.* 642. So also, if an auction is declared to be a sale "without reserve," the employment of a puffer by the vendor to bid for him, was held to render the sale void, and to entitle the purchaser to recover back the deposit, 15 *Mees & W.* 367.

When the owner of an estate intends only to put up the estate at a certain price, and not to bid for it, in case of an advance, no previous notice of his intention need be given.

The uncertainty of the law in respect to puffing was strikingly elucidated in the case of *Mortimer* v. *Bell*, in the Rolls court, March 26, 1865. The defendant, at an auction, bid £3,650 for property, but he refused to complete the purchase, because he discovered that the auctioneer had employed a person to bid. The plaintiff's answer to that objection was, that it was arranged with the auctioneer that there should be a reserved price of £3,600 and that, as the person employed to bid did not go beyond that amount, the defendant had made himself liable to purchase the property at £3,650. After hearing counsel on each side, his Honour gave judgment. He said it was totally impossible to reconcile the cases at law and the cases in equity on the subject. Any puffing at all vitiated a sale at law, but it was quite clear that that was not the case in equity.

A man who took part at an auction was naturally stimulated by persons bidding against him: he did not like to be defeated, and in the fervour of the moment he bids more than he would upon calm reflection. Equity considered it unjust, and a species of fraud, to take advantage of that principle in human nature in order to enhance the value of the property put up for sale, and held that the sale was bad where the fraud was discovered. But equity considered that it was perfectly fair to fix a reserved price, and to have a person employed to bid up to the reserved price,

beyond which he was not to bid. But even that was not allowable, if you stated in your particulars of sale that the property was to be sold unreservedly, because unreservedly meant that it would be sold without any distinction to the highest *bonâ fide* bidder. If that statement was not made it was to be implied that there was a reserved price, under which the property was not to be sold. In the present case, the person employed by the auctioneer to bid did not go a single step beyond the line marked out for him: he bid up to the reserved price, and there stopped, but the defendant proceeded to bid also beyond it, without any one inducing him to do so. The court was of opinion that it was a valid sale.

In 1867 it was enacted by 30 & 31 V. c. 48, s. 5, that the particulars and conditions of sale by auction of any land should state that such land would be sold without reserve, or subject to a reserved price, or whether a right to bid be reserved. If it is stated that such land would be sold without reserve, or to that effect, then that it should not be lawful for the seller to employ any person to bid at such sale, or for the auctioneer to take knowingly any bidding from any such person.

CHAPTER XXV.

Master and Servant.

THERE are four sorts of servants recognized by the laws of England: *first*, operatives or skilled labourers, the special statutes relating to which have been mostly abolished; *secondly*, menials, or such as live within the household of the master; *thirdly*, labourers, chiefly those employed in agriculture, who are hired by the day, the week, the year, or other term; *fourthly*, apprentices, whose service is regulated by deed of indenture.

If the hiring of a servant be general, without any particular time mentioned, the law construes the hiring to be for a year; and, in that case, a quarter's warning must be respectively given prior to the expiration of the term. But this refers chiefly to servants in husbandry, under 5 Eliz. c. 5; for if no special contract be made, a domestic or menial servant is entitled only to a month's warning, or a month's wages in lieu of it, *Robinson* v. *Hindman*.

If a female servant marry, she must nevertheless serve out her term, if insisted on, and her husband cannot take her out of her master's service.

A servant may be discharged, without notice, for incontinence or moral turpitude. So also, if a servant be taken into custody for *any* offence, and legally detained from his master's service, the *master is* authorized in discharging him, on payment of such wages *only as* are actually due; but if the offence with which the servant

is charged was committed before the time of hiring, an order from a justice is deemed necessary to warrant his discharge. Any gross misconduct or dereliction of duty, as sleeping from home all night without leave, or wilfully absenting himself when he knew he would be wanted, authorizes the dismissal of a servant without warning.

If a servant, hired for a year, happen, within the time, to fall sick, or be hurt, or disabled, in the service of his master, the master cannot put him away, or abate any part of his wages for that time.

Liveries, or other clothes supplied to the servant at the master's expense, continue the property of the master, and although worn by the servant, cannot be taken away, or otherwise disposed of, without the consent of the master.

A master may support his servant in an action at law against a stranger, or may bring an action against another for beating or maiming him, assigning as a ground for the action a loss of service; or he may even justify an assault in his defence: as may a servant in defence of his master. So, also, a master may maintain an action against any person for seducing or enticing his servant away, as well as against the servant for unjustifiably quitting his service; and it is said that when, without enticement, a servant quits his service without just cause, an action will lie against any person retaining him with a knowledge of the manner in which he left his master.

II. REPRESENTATIONS OF CHARACTER.

A master is not bound to give a servant a character, 3 *Esp.* 201; but if he do give a character, he must take care to give a true one; though, if the character be given without malice and to the best of his knowledge, no action lies.

If any person falsely personate any master or mistress in order to give a servant a character; or if any master or mistress knowingly give in writing a false character of a servant, or account of his former servant; or if any servant bring a false character, or alter a certificate of character, the offender forfeits, upon conviction, £20, with 10*s.* costs, 32 G. 3, c. 56.

By the 9 Geo. 4, c. 14, no one is liable for any representation of the character, conduct, credit, or ability of another, in order that the latter may obtain credit, money, or goods, unless such representation be made in *writing*, signed by the party to be charged therewith.

III. LIABILITIES OF MASTERS AND SERVANTS.

In general, masters are liable for the acts of their servants, done in course of business, by their command, expressed or implied.

If a servant commit a trespass by the command of his master, the master is guilty of it though the servant is not exonerated; for he is only to obey his master's *lawful* commands. If an innkeeper's servant rob his guests, the master is bound to make restitution. So, if I pay money to a banker's servant, the banker is answerable for it; but if I pay money to a clergyman or physician's servant, whose usual business is not to receive money for his master, and he embezzle, it I must pay it over again. If a steward lease a farm without the owner's knowledge, the owner must stand to the bargain; for this is the steward's usual business.

A wife, a friend, or relation, that usually transacts business for a man, are, so far, his servants; and the principal must answer for their conduct.

Again, if I deal usually with a tradesman, by myself, or constantly pay him ready money, I am not answerable for what my servant buys on trust; for here is no implied order to trust my servant; but if I usually send him upon trust, or sometimes upon trust and sometimes with ready money, I am answerable for all he takes up; for the tradesman cannot possibly distinguish when he comes by my order, and when he comes upon his own authority.

Lastly, a master is answerable for the *negligence* of his servant. If a smith's servant lame a horse while he is shoeing him, or if the waiter at a tavern sell a man bad wine, whereby his health is injured, an action lies against the master, not against the servant. A master is chargeable if any of his family lay or cast anything into the street or highway, to the injury of an individual, or to the common nuisance of the public; for the master has the superintendence and charge of his household. But when the act of the servant is *wilful*, the master is not responsible, unless the act is done by his command or assent.

Servants are bound to discharge their duty with care, diligence, and fidelity, and are answerable for gross carelessness or wilful neglect; but they are not answerable for any loss or injury which may unavoidably happen in the course of their avocations. So that the practice of some masters or mistresses, of deducting from servants' wages the value of articles accidentally lost, broken, or injured, is illegal, and cannot be defended, unless it was expressly stipulated at the hiring that the servant should be liable to make good such damages.

By 30 & 31 V. c. 141 (The Master and Servants Act, 1867), wherever the employer or employed neglect or refuse to fulfil any contract of service, or the employed neglect or refuse to enter or commence his service according to the contract, or absent himself from service, or wherever any question or dispute arises as to the rights or liabilities of either, or as to the misconduct, ill-treatment, or injury to either, the party feeling aggrieved may lay a complaint

before a justice in England, Wales, or Ireland, and before a justice or sheriff in Scotland, setting forth the facts and the amount of compensation claimed. Either party can be compelled to appear to the summons on pain of having a warrant issued for his apprehension (ss. 4-7).

In case of an intention to abscond appearing, security for appearance is to be found. Compensation may be awarded for breach or non-performance of service. The recognizance or bond for fulfilment of contract may be enforced. The money may be recovered by distress—imprisonment in default; such imprisonment to be in discharge of compensation. But no wages which may be accruing due to the employed under any contract of service, can be distrained.

A magistrate has the power of committing the party complained against, if he has been guilty of gross misconduct, to gaol, without hard labour, for any term not exceeding three months; but there is an appeal to the next quarter session. Wages are not to be payable during imprisonment.

CHAPTER XXVI.

Industrial Classes.

In the last chapter was exhibited the general civil relations established by the laws between masters and servants; in this will be brought together the statutory provisions made for regulating mills and factories, and the employment of artificers, labourers, and apprentices; for the arbitration of disputes between masters and workmen; for fixing the coin or commodity in which wages shall be lawfully paid; for the establishment of free libraries, baths, and washhouses; the protection of apprentices, and the regulation of lodging-houses; and also the laws made for protecting and encouraging those Savings, Friendly, and Provident institutions, especially intended for the benefit of the working classes. These different subjects will be comprised under the following heads:—

1. *Friendly Societies.*
2. *Industrial and Provident Societies.*
3. *Free Libraries and Museums.*
4. *Savings Banks.*
5. *Purchase of Government Annuities.*
6. *General Post-office Savings Banks.*
7. *Loan Societies.*
8. *Benefit Building Societies.*
9. *Combination Laws.*

10. *Arbitration of Disputes.*
11. *Mills and Factories.*
12. *Mines and Collieries.*
13. *Regulation of Agricultural Gangs.*
14. *Regulation of Bakehouses.*
15. *Payment of Wages in Goods.*
16. *Millers.*
17. *Chimney-sweepers.*
18. *Artificers and Labourers.*
19. *Servants and Apprentices.*
20. *Public Baths and Washhouses.*
21. *Labourers' Dwellings.*
22. *Lodging-houses for the Labouring Classes.*
23. *Common Lodging-houses.*

I. FRIENDLY SOCIETIES.

These institutions have long existed in this country; but, in 1793, the salutary objects they sought to attain were so apparent, and the number of persons interested therein so great, that it was thought expedient to render them an object of legislative protection and regulation. During late sessions of parliament, the laws relative to societies of mutual assurance have undergone very elaborate inquiries, and such alterations were sought to be introduced as seemed likely to avert the failure that had befallen some institutions, owing to the mistaken principles on which they had been conducted.

In 1855, all the acts relating to these societies, from the 33 G. 3, c. 54, to the 18 V. c. 101, were wholly repealed, so far as they relate to friendly societies, and their provisions consolidated and amended by the 18 & 19 V. c. 63. But by ss. 2–4, societies under former acts are to continue, their rules to remain in force, their enrolments to be sent to the registrar, and all their contracts, bonds, &c., to continue in force. Such subsisting societies as shall not hereafter effect insurances to any person of any sum exceeding £200, or any annuity exceeding £30 per annum, are to enjoy the privileges conferred by this act on societies established under its provisions. Three registrars are appointed, one for England and one for Ireland, both to be barristers, and one advocate for Scotland, all to be of not less than seven years' standing; the salary for the present registrar for England not to be less than £1,000, the other two not exceeding £800 per annum, besides the expenses of their office. Any number of persons are empowered under this act to establish a friendly society, by subscriptions or donations: 1. For ensuring a sum of money to be paid on the birth of a member's child, or on the death of a member, or for the funeral expenses of the wife or child of a

member; 2. For the relief of the members, their husbands, wives, children, brothers or sisters, nephews or nieces, in old age, sickness, or widowhood, or the endowment of members or nominees of members at any age; 3. For any purpose which shall be authorized by one of her Majesty's principal secretaries of state, or in Scotland by the lord advocate, as a purpose to which the powers and facilities of this act ought to be extended. But no member to contract for an annuity exceeding £30 per annum, or a sum payable on death, or any other contingency, exceeding £200, ss. 4–9.

Benevolent societies, if their rules are transmitted to the registrar, and found not to be inconsistent with this act, are to receive a certificate, and be entitled to its privileges.

Societies may be dissolved by the votes of five-sixths in value of the then existing members called together at a special meeting; every member to be entitled to one vote, and an additional vote for every five years that he may have been a member; or two or more societies may unite, or one society may transfer its engagements to another on such terms as may be agreed upon by the major part of the trustees or the majority of members at a general meeting convened for the purpose. Minors may be elected members of the society, but not to hold office during their minority. Trustees, if empowered by a majority of the members, may purchase, build, or hire any buildings, with lands not exceeding one acre, for the purpose of holding the meetings of the society; or with the like consent may sell, let, or exchange, or mortgage the same; but the money is to be raised according to the rules of such society on such behalf invested. Trustees are to be appointed by a majority of members present at a meeting of the society, and the property of the society vested in them; they are authorized to maintain actions in any court of law or equity brought by or against them; but not to be liable for any deficiency of the funds of the society, but only for the moneys actually received by them on account of the society. If any officer die, become bankrupt, or insolvent, having in his hands by virtue of his office, moneys, or other property of the society, his executors, assignees, trustees, or the sheriff, shall, upon a written demand from the trustees, deliver up the same: and frauds are punishable by fine or imprisonment, ss. 11–24.

Before any friendly society is established under this act, the rules and regulations in a defined form are to be settled, such rules providing that all moneys received or paid for the various objects of the institution shall be entered into and kept in a separate account; and copies of the rules are to be sent to the registrar, and his certificate obtained, for which certificate no fee is to be payable, but a certificate of an actuary of five years' standing in some life office must be sent with the copies in cases of tables of annuities being included. The rules may be altered, amended, or

rescinded, subsequent to registration, but copies of them must be sent to the registrar, and his certificate obtained; and whenever the place of meeting is changed, notice must be given to the registrar. The giving of false copies of the rules and regulations of a society, or of any alterations that may have been made, is punishable as a misdemeanour. Copies of the rules and regulations signed by the registrar are to be received as evidence in all courts without further proof, s. 29.

Any sum not exceeding £50 may be paid to the proper representative on the death of any member without taking out letters of administration in England or Ireland, and without confirmation in Scotland; the trustees are indemnified, if, after having paid the sum due to the person appearing as the proper representative, any other claim should be made, but the action may lie against the person so receiving the money. The funds of the society are to be invested, according to the decision of a majority, in savings banks, the public funds, or with the commissioners of the national debt, or in such other securities as the majority shall direct, not being purchases of houses or land (save for the purpose of holding their meetings), nor shares in joint-stock companies, nor on personal security, except to members of a certain standing, to the amount of not more than half the amount of his life assurance. On the death of a trustee, or the cessation of his office from any cause, the stock standing in his name may be transferred to a new trustee on the direction of the registrar. No copy of rules, letter of attorney, receipt, or other document, to be liable to stamp-duty in any society not insuring to an amount of more than £200 on the death of a member, or of annuities not exceeding £30 per annum. ss. 30–37.

Members cannot belong to more than one such society, so as to receive more than the above sums; a declaration is required on entering that they have not done so, and any fraudulent declaration is punishable as a misdemeanour. Disputes are to be settled according to the rules of the society, and to be without appeal; and where the rules do not prescribe a mode of settling disputes, or where arbitrators do not agree, they also are to be decided by the county courts in England, in Scotland by the sheriff, and in Ireland by the assistant barrister, within their respective districts. In the case of societies whose rules are not certified, the disputes between the society and its own members are to be settled in the same manner as in those of certified societies. An annual return is to be made in the first three months of each year of the funds and effects of the society during the preceding twelve months, or a copy of the annual report to be sent to the registrar, and every five years a return of the rate of sickness and mortality within that period; the registrar laying before parliament a report of his proceedings, and

se principal matters connected with friendly societies annually, 8–46.

here the rules of any society already established have provided any member shall be deprived of any benefit by reason of his ment or service in the militia, the trustees are to require an contribution from such member not exceeding one-tenth of usual rate, while he is serving out of the United Kingdom, or may suspend his claim to any benefits, while so serving, together with all claims for contribution, until his return, when he is e placed on the same footing as before. This act extends to United Kingdom.

1858 the preceding act was amended, and additional facilities s by 21 & 22 V. c. 101, for carrying it into effect. By s. 1, diction of county court in city of London given to sheriff's , and in Ireland to the assistant barrister within his district, in Cork and Dublin to the recorder. One or two justices in nd may act as justices in England.

y s. 2, no money to be paid on an insurance on the death of a under ten years of age for funeral expenses, without a certifi- signed by a qualified medical practitioner, stating the pro- cause of death. Provision against trustee or officer paying um for funeral expenses above £6 for a child under five years, 0 for a child between five and ten years. Penalty £5 or .

Any friendly society, with approval of registrar in g, may change its name. An officer to be proceeded against alf of society. Where the rules of any friendly society disputes to be referred to justices, any justice of the peace in the district in which the place of business of such society ted may settle disputes, s. 5.

& 24 V. c. 58, in case of dissolution of society, under V. c. 63, s. 13, it is not necessary to state in agreement division of funds, but may refer the same to the award gistrar. The registrar's award to be conclusive without Provision for societies dissolved before the act, s. 5. S. 22 V. c. 101, repealed. Penalty of not above 20s. for g annual return to registrar pursuant to s. 35 of 18 & 19

II. INDUSTRIAL AND PROVIDENT SOCIETIES.

under this denomination first obtained legislative sanc-, and subsequently several acts were passed generally ecure to the members of such associations the immu- friendly societies; these acts were repealed and their solidated and amended in 1862 by 25 & 26 V. c. 87. is act, certificate of registration of such societies may ithout fee, on application to the registrar of friendly y number of persons not less than seven may estab-

lish a society under the act for the purpose of carrying on any labour, trade, or handicraft, whether wholesale or retail, except the working of mines and quarries, and except the business of banking, and of applying the profits for any purposes allowed by the Friendly Societies acts, or otherwise permitted by law. A member not entitled to hold or claim any interest in a provident society exceeding £200. This act was further amended in 1867 by 30 & 31 V. c. 117. By this act, a Society registered under it may hold any amount of interest in any other society so registered, but no other person can hold in any registered society any interest over £200, under a penalty equal to the excess of the interest over the sum of £200. A member of any registered society may, by any writing under his hand, delivered at the registered office of the society, appoint any person, being the husband, wife, father, mother, child, brother, sister, nephew or niece of such member, to whom the share of such member may be transferred at his decease. Provided that the sum standing to the account of such member does not exceed £50. But the society may in lieu of making such transfer pay any nominee the full value. The act deals with the recovery of penalties, and registration of and addition to rules, and the forms of certificate and rules.

A registered society not allowing any member to hold any interest exceeding £200 is not chargeable under schedule C & D of the Income Tax acts.

III. FREE LIBRARIES AND MUSEUMS.

These are regulated by 18 & 19 V. c. 70, and its provisions may be adopted by the inhabitants of any municipal borough, if, by the last census, the population exceed 5,000, and two-thirds of the ratepayers consent. Rate levied for the purpose of carrying out the act not to exceed one penny in the pound. If any meeting convened for the purpose of considering the act determine against its adoption, no other meeting to be called for a year. Act may be adopted in the city of London, if two-thirds of persons rated to the consolidated rate assembled at a public meeting assent.

By 29 & 30 V. c. 114, any public meeting as above is to be called on the request of the town council, or on the request of ten ratepayers residing in the borough; and parishes or district may unite in adopting the act. This act was repealed as to Scotland by 30 & 31 V. c. 37, s. 1.

IV. SAVINGS BANKS.

Savings banks are established under the authority of parliament for the deposit of small sums of money, to accumulate by compound interest, and which the depositors may at any time withdraw from the bank, without charge or deduction beyond the necessary expenses attending their management.

By 9 G. 4, c. 92, the laws relating to savings banks were amended; and it is according to the provisions of this and other acts which were consolidated in 1863 by 26 & 27 V. c. 87, that these societies are established and regulated. Rules for the formation of a society must be approved by the commissioners for the reduction of the national debt. Such rules to be entered in a book, to be open to the inspection of the depositors; and two written or printed copies sent to the barrister appointed to certify them. The barrister to ascertain whether the rules be conformable to law; and for giving a certificate of such conformity, or pointing out where they are repugnant, to receive from the society a guinea for his fee: and to return one copy to savings bank and transmit the other for approval of the national debt commissioners. Weekly returns to be made to commissioners.

No bank to have the benefit of the act unless it be expressly provided in the rules that no treasurer, trustee, or manager, shall profit by any deposit beyond his *actual expenses;* but allowances may be made for the salaries of other officers, and the charges of management. Treasurer, and *every officer* receiving a salary, is to give security for the faithful discharge of his trust.

Persons entrusted with the money, *books, papers, property,* or effects of the society, to surrender them on the order of not less than *two* trustees and *three* managers, or of a general meeting of trustees or managers.

Deposits for the benefit of any person *under* the age of twenty-one years, may be received, and such depositor receive his share and interest in the funds of the institution.

When deposits are made by married women, without notice that they are married, or when women marry after having made deposits, the trustees may *pay money in respect of such deposits,* to such women, unless the husbands give notice of the marriage to the trustees, and require payment to be made to them.

No person to pay money into a savings bank, by ticket, number, or otherwise, without disclosing his *name, business,* and *residence,* to be entered in the books of the institution. But trustees may subscribe on behalf of others, s. 36.

Depositors in one savings bank not to deposit in *any other,* nor to open a new account in the bank; a declaration to this effect to be made at the time of making the first subscription; and persons violating this regulation to *forfeit their deposits.*

Trustees not to receive from any one present or future depositor more than £30 in any one year, nor more than £150 in the whole; and when the principal and interest of a depositor amount to £200, *the interest to cease,* s. 39.

The whole deposit may at any time be transferred from one savings bank to another, the *depositor receiving* a certificate from the trustees, s. 40.

Depositors *dying, leaving any sum exceeding fifty pounds,* the

same not to be paid until after administration; the person claiming to administer to produce certificate of amount in the bank; and no duty to be paid on probate or legacy, where the property of a depositor does not *exceed* £50.

When disputes arise, to be *settled by the barrister* appointed by the national debt commissioners, whose award will also determine by which party his fee of a guinea shall be paid.

Trustees annually to make up, to 20th November, an account of their funds and expenses, and such account to be transmitted to national debt commissioners. Accounts with a bank may close if not transmitted, s. 55. Accounts to be affixed for information of depositors in a conspicuous part of the bank-office, s. 59.

Interest payable to depositors to be computed to 20th May and 20th November, half-yearly or yearly.

The act commenced November 20, 1863, and extends to the United Kingdom and the Channel Islands. Depositors' books in Ireland to contain copy of rules, s. 52. Commissioners for the reduction of the national debt may keep a balance in the Bank of Ireland for drafts which may be drawn on account of savings banks there.

V. PURCHASE OF GOVERNMENT ANNUITIES.

By 16 & 17 V. c. 45, the national debt commissioners may receive money from depositors in savings banks for the purchase of annuities. They may grant, to or for the benefit of any depositor in a savings bank or other person whom the commissioners shall think entitled to be or to become a depositor in a savings bank, any immediate or deferred life annuities depending on single lives, or immediate annuities depending on joint lives with benefit of survivorship, or on the joint continuance of two lives, to any amount not less than £4, nor more than £30 in the whole, to or for the benefit of any one person, and receive payment for such immediate life annuities in one sum, or for such deferred life annuities either in one sum or in annual sums, payable for fixed periods. Grants of annuities may be made to a husband and wife, though the one or the other may already have an annuity to the full amount, and in the cases of females, infants, and idiots, or persons of unsound mind, to trustees on their behalf; but no such annuities are to be granted to or for the benefit of any person under the age of ten years. The annuities granted under this act are not to be assignable, except in cases of bankruptcy or insolvency. Persons who have contracted for a deferred annuity, who may be unable to keep up their payments, may have an annuity granted, either immediate or deferred, at their own option, equivalent to the amount of the money paid.

An act of 1864, the 27 & 28 V. c. 43, amends and makes new provisions on the purchase of *government annuities*. By s. 1,

deferred annuities may be granted on the condition to be fixed at the time of purchase, that the sum required to purchase such annuity shall be payable in smaller instalments, and at shorter periods. Annuities may be granted above £30, but not exceeding £50. No contract or payment on death to be made by or on the behalf of any person under the age of sixteen, or over the age of sixty years. No contract under this or former act to be for a greater amount in the whole than £100, or of a less amount than £20. Power given to construct fresh tables for annuities and assurances, such tables to be approved by parliament. Tables for payments on death, as respects interest of money, to be at the rate of 3 per cent. per annum. Act not to come in force till new tables can be acted on. By s. 8, provision is made in case of default by purchasers after five years' payment. Purchasers liable to provisions of the existing savings banks acts; but, if dissatisfied with arbitration under such acts, may proceed in the county court of the district in which the contract was made. Contracts for payment at death, after being duly paid for five years, may be assigned.

The 27 & 28 V. c. 46, provides for investment of moneys received by commissioners for reduction of national debt, same as on account of savings banks. Such investment convertible by the Treasury, if advantageous to the public service, with an equivalent amount of annuities for a term of years, payable out of the consolidated fund. All accounts of money received, and the disposal thereof, to be yearly laid before parliament. Commissioners, every five years, to transmit a statement of financial results and liabilities. If a deficit, to be supplied out of consolidated fund.

VI. GENERAL POST-OFFICE SAVINGS BANKS.

The 24 V. c. 14, extends the facilities for the deposits of small savings, by making the General Post Office available for the purpose, and affording the direct security of the State to every depositor for the repayment of all money deposited, together with the interest due thereon.

By s. 1, postmaster-general may direct such officers as he deems fit to receive deposits for remittance to the principal office, and to repay the same according to prescribed regulations. Every deposit received by an officer to be entered by him in the depositor's book, and attested by the stamp of the office, and the amount on the same day reported to the postmaster-general, and an acknowledgment returned within ten days; meanwhile the evidence of title to be the entry in the depositor's books. Period of acknowledgment may be extended ten or more additional days. But no deposit to be of less amount than *one shilling*, nor of any sum not a multiple of a shilling, s. 2. Depositors, or their authorized

representatives, entitled to repayment of deposit within ten days after demand at the office where the deposit has been made, s. 3. Name of depositor not to be disclosed except to postmaster-general. Money to be vested in the commissioners for the reduction of the national debt. The consolidated fund made security for repayment of claims of depositors.

The interest payable to depositors to be at the rate of £2 10*s.* per £100, but such interest not payable on any amount less than *one pound*, or some multiple of a pound, and not commence until the first day of the calendar month next following the day of deposit, and to cease on the first day of the calendar month in which the deposit is withdrawn. Interest to be calculated to the 31st of December in every year, and become part of the principal money.

Ss. 9–13 provide for the investment of funds, the transfer by certificate of any deposit, if so desired, by the depositor to a savings bank, and the regulations to be made by the postmaster-general, and laid before both houses of parliament. Account of expenses also to be laid before parliament, and examined by commissioners of audit. Provisions of savings banks made applicable to the present act, so far as not repugnant, s. 14. Expenses to be defrayed out of moneys received under the act, s. 15.

The 26 V. c. 14, amends the law relating to post-office banks by providing for the relief of trustees whose banks have been or shall be closed, and makes further provision in respect of the investment of moneys of banks.

An act of 1866, the 29 V. c. 5, empowers the Treasury to substitute terminable annuities, not exceeding thirty years, for a certain amount of stock standing to post-office and savings bank accounts. See also 32 & 33 V. c. 59.

VII. LOAN SOCIETIES.

These were established under 5 & 6 W. 4, c. 23, but that has been repealed and amended by 3 & 4 V. c. 110, which has been made perpetual by 26 & 27 V. c. 26. Persons desirous of forming loan societies, or who have formed them for creating a fund for making loans to the industrious classes, and taking repayment by instalments with interest, must cause the rules framed for their management to be certified and deposited. Three transcripts of rules to be made, written or printed, signed by three members, and countersigned by clerk or secretary, to be submitted to the barrister appointed to certify the rules of savings banks, the barrister to certify the legality of the rules for a fee of one guinea; and one transcript to be kept by the barrister, another returned to the society, and the third sent to the clerk of the peace to be confirmed by the court of quarter sessions. No confir-

rules to be altered, except at a general meeting of the members of the society. Rules to be entered in a book kept by the officer of the society. Property of society to be invested in one or more trustees. Debentures may be issued for the sums deposited without liability to stamp duty. Trustees signing debentures not personally liable, unless specially undertaken. Sums under £50 deposited in any loan fund are payable by the society within three calendar months, without probate, to the representative of any deceased debenture-holder; treasurer to give security. Society not to lend to any person at the same time a greater loan than £15, and no second loan to be made till the first loan has been repaid. No note or security liable to stamp. Securities not transferable by endorsement or otherwise. Loans recoverable by clerk or treasurer in county courts. On giving form of application, 1s. 6d. demandable for inquiry into the character and solvency of the applicant, and his proposed sureties. Discount at the rate of 12 per cent. per annum may be deducted on all advances; and the principal sum to be repaid conformably to the rules of the society. Clerks, &c., overcharging, liable to penalties of usury. Instalments not to be paid in advance, nor loans to be balloted for.

VIII. BENEFIT BUILDING SOCIETIES.

For the encouragement and regulation of these, it is provided by 6 & 7 W. 4, c. 32, that persons in Great Britain or Ireland may form themselves into such societies, for the purpose of raising, by monthly or other subscription, shares not exceeding £150 each; such subscription not to exceed 20s. per month for each share; and each member to receive the amount of his share out of the funds of the society for the erection or purchase of a dwelling-house, or other real or leasehold estate, to be secured by mortgage to the society, until the whole amount of his share has been repaid to the society with interest, and all fines or other payments incurred in respect thereof. Societies to frame rules and impose fines. No member to receive interest on his share until the whole of his share has been realized, except on his withdrawal, according to the rules of the society. Provisions of the Friendly Societies Acts, so far as applicable, extended to the building societies; but not entitled to the benefits of the statute unless their rules are certified and deposited as directed by those acts. Transfer of shares and rules exempt from stamp duty.

Under the provision of the act the society is not precluded from making loans on mortgage to its own members, and the trustees may maintain an action of covenant against a member for the amount of his subscriptions and fines, although its rules provide for referring the disputes between the trustees, officers, and other members; but it seems the intention of the legislature was to

prevent any member from acquiring a larger interest in the funds than £150 in respect of his shares in the society. *Jer. Digest*, 1848, 43, 1.

IX. COMBINATION LAWS.

It has been the spirit of recent legislation to consider labour as a commodity, the price of which is best determined by free competition between the workman and his employer. Consequently, the laws which empower justices to fix a rate of wages, and punish workmen for combining to raise wages and determine the hours of labour, have been abolished.

All the statutes dealing with this subject were explained or repealed by 6 G. 4, c. 129, and 22 V. c. 34; but these last two acts have been in their turn repealed, in 1871, by 34 & 35 V. c. 32, which amends the criminal law relating to violence, threats, and molestation. It provides, that every person who shall do any one or more of the following acts, that is to say:—

1. Use violence to any person or any property.

2. Threaten or intimidate any person in such manner as would ustify a justice of the peace, on complaint made to him, to bind over the person so threatening or intimidating to keep the peace.

3. Molest or obstruct any person in manner defined by this section with a view to coerce such person,—

1. Being a master, to dismiss or to cease to employ any workman; or, being a workman, to quit any employment or to return work before it is finished.

2. Being a master, not to offer, or being a workman, not to accept, any employment or work.

3. Being a master or workman, to belong or not to belong to any temporary or permanent association or combination.

4. Being a master or workman, to pay any fine or penalty imposed by any temporary or permanent association or combination.

5. Being a master, to alter the mode of carrying on his business, or the number or the description of any persons employed by him, shall be liable to imprisonment, with or without hard labour, for a term not exceeding three months.

A person shall, for the purposes of this act, be deemed to molest or obstruct another person in any of the following cases, that is to say:—

1. If he persistently follow such person about from place to place.

2. If he hide any tools, clothes, or other property owned or used by such person, or deprive him of or hinder him in the use thereof.

3. If he watch or beset the house or other place where such person resides or works, or carries on business, or happens to be,

or the approach to such house or place, or if with two or more other persons he follow such person in a disorderly manner in or through any street or road.

Nothing in this section shall prevent any person from being liable under any other act, or otherwise, to any other or higher punishment than is provided for any offence by this section, so that no person be punished twice for the same offence.

Provided that no person shall be liable to any punishment for doing or conspiring to do any other act, on the ground that such act restrains or tends to restrain the free course of trade, unless such act is one of the acts hereinbefore specified in this section, and is done with the object of coercing as hereinbefore mentioned.

All offences under the act to be prosecuted under the summary jurisdiction acts, subject to appeal to the quarter sessions.

X. ARBITRATION OF DISPUTES.

The 5 G. 4, c. 96, repeals former statutes for the arbitration of disputes between master and workman, and substitutes new regulations for settling all disputes which may arise respecting wages, the hours of labour, the finishing of work, the finding of implements, and the compensation to be given for any new or altered manufacture. But nothing in this act empowers the justices to establish a *rate of wages*, or price of labour, unless with the mutual consent of master and workman.

When differences arise on any of the above subjects the parties may mutually agree to submit their case to the determination of a magistrate. If they cannot agree to such a reference, the justice is empowered, on complaint of one of the parties, to nominate not less than four, nor more than six persons, half master-manufacturers, agents, or foremen, and half workmen ; out of the number so nominated, the master chooses one arbitrator, and the workman chooses another, who have full power to hear and finally determine the question in dispute. If one of the arbitrators refuse to act, the justice may appoint another, the expense being defrayed by the party whose referee refused to act ; in case the second arbitrator chosen shall not attend at the time and place appointed, the other arbitrator may proceed by *himself*, and determine the dispute, the award of such sole arbitrator being conclusive.

Arbitrators may examine, upon oath, the parties and witnesses ; but their determination must be made within two days after their nomination. Justices may commit persons to prison who refuse to attend and give evidence on summons by the arbitrators. In case the arbitrators cannot agree, the justice is appointed *umpire*, who is not to exceed two days in making his decision from the expiration of the time allowed to the arbitrators to make and sign their award.

No justice being a master-manufacturer can preside.

Any other mode to which the *parties may agree*, for the settlement of their differences, is equally binding, and the same process of enforcing the award by distress, sale, and imprisonment, is allowed.

When any married woman, or infant under twenty-one years of age has cause of complaint, in any of the cases provided for by this act, the proceedings may be carried on by the husband, or by the parents or kindred of the child.

Work not objected to within twenty-four hours after delivery cannot afterwards be complained of.

Complaint, by any workman, of *bad materials* must be made within three weeks after receiving them, and all other complaints must be made within six days after the cause of such complaints shall have arisen.

Money directed to be paid by any award, not paid within two days, the same may be levied by distress, and in case no sufficient distress can be had, the party may be imprisoned for any time not exceeding three months.

Without repealing the acts for the arbitration of disputes between workmen and employers, the 30 and 31 V. c. 105, declares that it is expedient to form *equitable councils of conciliation or arbitration*, and that the powers given by former acts should be extended for the enforcing of awards made by councils of conciliation. Power given to her Majesty or secretary of state to license councils of conciliation. Councils to consist of not less than two nor more than ten masters or workmen and a chairman. Councils to be appointed within thirty days after grant of license, s. 3. Council to appoint their own chairman and such other official as deemed requisite. Power to adjudicate on all differences between master and workmen is set forth in the act referred to of George IV. A quorum of not less than three may constitute a council for the adjudication of any case of dispute. Chairman to preside at meetings of council, and to have casting vote. Council to be elected for one year; and no barrister, solicitor, or attorney to attend unless consented to by both parties, s. 7. Election to be declared within seven days of nomination. A poll may be demanded. House-holders and part occupiers may demand to be registered, and have a vote for the council, and may be elected thereto.

The Arbitration Act, 1872 (35 & 36 V. c. 46), makes further provisions for arbitration between masters and workmen, and applies Masters and Servants Act (30 & 31 V. c. 141).

An agreement under this act shall either designate some board, council, or person, as arbitrators, or define the time and manner of appointment of an arbitrator, and shall designate an umpire in case of disagreement between arbitrators. A master and workman shall become mutually bound by any agreement under this

act, upon the master or his agent giving a workman, and the workman accepting, a printed copy of the agreement: Provided, that the workman may within forty-eight hours give notice that he will not be bound by the agreement.

The act also further regulates length of time the agreements last and the rules to be contained, &c.

XI. MILLS AND FACTORIES.

Several acts have been passed for the appointment of inspectors, for the *preservation of the health*, and for regulating the education and hours of work, of children employed in mills and factories.

By the 3 & 4 W. 4, c. 103, children are required to attend a *school* chosen either by parents or inspector, and one penny in every shilling to be deducted from the child's earnings for the expense thereof. Unlawful to employ children unless they produce weekly to the factory master the schoolmaster's ticket of attendance. Interior walls of mills and ceilings of rooms to be limewashed every year.

By 7 & 8 V. c. 15, every inspector shall have power to enter every part of any factory at any time, by day or by night, when any person shall be employed therein, and to enter by day any place which he shall have reason to believe to be a factory, and to enter any school in which children employed in factories are educated, and at all times to take with him into any factory the certifying surgeon of the district, and any constable or other peace officer whom he may need to assist him, and shall have power to examine, either alone or in the presence of any other person as he shall think fit, every person whom he shall find in a factory or in such a school, or whom he shall have reason to believe to be or to have been employed in a factory within two months next preceding the time when he shall require him to be examined touching any matter within the provisions of this act; and the inspector may require such person to make a declaration of the truth of the matters respecting which he shall have been examined. Inspector also to have power to examine the register, certificates, notices, and other documents kept in pursuance of this act; and every person who shall refuse to be examined, or refuse to sign his name or affix his mark to a declaration of the truth of the matters respecting which he shall have been examined, or who shall in any manner attempt to conceal or otherwise prevent any child or other person from appearing before or being examined by an inspector, or who shall prevent or knowingly delay the admission of an inspector to any part of a factory or school, or shall prevent an inspector from pursuing his examinations, shall be deemed guilty of wilfully obstructing the inspector in the execution of the powers entrusted to him.

All persons on beginning to occupy a factory are required to send, within one month, a written notice to the office of the Factory Inspectors, London, stating the name of the factory, the place, the post-office, the nature of the work and amount of the moving power, and the name of the firm.

The inspectors are empowered to fix the surgeon's fees, and appoint the time of his visits, but so that the fee shall not exceed 1*s.* for each person where he examines more than one, with 6*d.* for each half-mile over one mile from his residence; but the fees in no case to exceed 5*s.* for a visit, unless more than ten persons are examined, then 6*d.* each; where the residence of the surgeon is within one mile, the fee not to exceed 2*s.* 6*d.*, except to examine more than five, then 6*d.* each; and not more than 6*d.* is to be taken for a certificate signed elsewhere than at the factory; the occupier of the factory to pay the fees, deducting the same from the wages of the person certified, but not exceeding in any one case the sum of 3*d.*; where an agreement has been made between an occupier and a certifying surgeon, such agreement to be instead of fees.

By s. 18, it is required that where the interiors of factories are painted in oil, such paint shall be washed with hot water and soap at least once within every fourteen months; and if not painted in oil, then to be lime-washed every fourteen months.

No child or young person to be employed in the wet-spinning of flax, hemp, &c., unless means be employed for protecting them from being wetted, and where hot water is used, for preventing the escape of steam upon the workers.

The term "child" is explained to mean a person under the age of thirteen: and the term "young person" to mean a person of thirteen and under the age of eighteen. The term "factory" is explained to mean any building or premises within the curtilage, in which steam, water, or other mechanical power is used to work machinery employed in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, or tow, either separately or mixed together, or mixed with any other material, or any fabric made thereof.

Mill-gearing is not to be cleaned while in motion; machinery and wheel-races to be securely guarded and fenced, and in all cases of bodily injury the factory occupier or his agent shall give notice to the certifying surgeon, who is to send a copy of the same by post to the sub-inspector; the surgeon is then to examine into the nature and cause of such injury, and report the same, together with any other information relative to the accident, within twenty-four hours, to the inspector of the district; for this investigation the surgeon is to receive a fee of not more than 10*s.* nor less than 3*s.*, as the inspector may direct.

In the observance of time the inspector is to approve in writing

of some public clock, or clock exposed to public view, as the one by which the hours of work and attendance are to be regulated.

Ss. 33 & 34 provide for the recovery of time lost by the stoppage of the machinery or other accident, which is not to exceed one hour in each day, except Saturday.

The 7 & 8 V. c. 15, is amended by 19 & 20 V. c. 38, which explains that so far as it refers to *mill-gearing*, it shall apply only to those parts with which children and young persons and women are liable to come in contact, either in passing, or in their ordinary occupation in the factory. Penalty, £20, or not less than £5, for omitting to fence off machinery, after notice from the inspector.

The 16 & 17 V. c. 104, makes further provision by enacting that no child (that is, person under thirteen) shall be employed in any factory before six o'clock in the morning, or after six o'clock in the evening of any day, and no child shall be employed for any purpose on any Saturday after two o'clock in the afternoon. But children on any day but Saturday, from September 30 to April 1, may for one month be employed between seven in the morning and seven in the evening; notice being given to the inspector of such employment, and hung up in the factory. Children not to be employed in recovering lost time after seven in the evening.

PENALTIES.—Any person convicted of having employed a child or young person without having obtained a certificate from a schoolmaster, shall for every offence incur a penalty of not less than 20*s.* nor more than £3, unless the offence be committed at night; then the penalty to be not less than 40*s.* nor more than £5. Parent or person having a direct benefit from the child's or young person's labour, neglecting to cause their attendance at school as directed, to incur a penalty of not less than 5*s.* nor more than 20*s.* for each offence, unless it shall be proved that such offence was committed without their cognizance or connivance. The penalty for not washing or lime-washing the walls as directed, to be not less than £3 nor more than £10, and £2 additional for every month for neglect after conviction. For not fencing machinery, a penalty not less than £5 nor more than £20. Suffering injury from the occupier not having the machinery properly fenced, or any driving-strap or band of which notice has been given by the inspector, to incur a penalty of not less than £10 nor more than £100, the whole or any part of such penalty to be applied for the benefit of the injured person, as the secretary of state shall determine; but the penalty not to be incurred if the complaint of the inspector as to the danger had been previously heard and dismissed. The penalty for obstructing inspectors or sub-inspectors in the execution of their duties not less than £3, nor more than £10, except the obstruction be made to an examination of the factory at night, then to be not less than £20 nor more than £50. Every person convicted of giving or making use of false or counterfeited certificates, knowing them to be untrue, or wilfully conniving at making any false or counterfeited certi-

Scotland, or any false entry in any register or other paper or notice, and every person signing a false declaration on any proceedings, to be liable to a penalty of not less than £5 nor more than £20, or to imprisonment for a term not more than six months. Penalties for other offences to be not less than £2 nor more than £5.

The powers of the inspectors and the regulations in respect of the employment of children and women were, by 8 & 9 V. c. 29, extended to *print-works*, and by 33 & 34 V. c. 62, the Factory Acts have been applied to print-works and bleaching and dyeing works.

By 5 & 6 V. c. 99, it is enacted that no *ropery*, *rope-walk*, or *rope-work* in which machinery moved by steam, water, or other mechanical power is not used for drawing or spinning the fibres of flax or hemp, but only for laying or twisting or other process of preparing or finishing the cordage, and which has no internal communication with premises forming part of a mill or factory, except such as is necessary for the transmission of power, shall be deemed a mill or factory within the meaning of the Factory Acts, and not liable to children, young persons, or women in rope-works.

By 13 & 14 V. c. 54, no young persons, and no *young female* above eighteen, shall be employed in any factory before six o'clock in the morning, or after six o'clock in the evening of any day, except to recover lost time; and no young person or female above eighteen shall be employed in any factory either to recover lost time, or any other purpose, on any *Saturday*, after two o'clock in the afternoon. Meal times to be taken between half-past seven in the morning and six in the evening, in lieu of half-past seven. Young persons, or any female above eighteen, not to be employed in recovering lost time after seven in the evening. Ss. 5 & 6 refer to the recovery of lost time, and to the employment of young persons and females from seven in the morning to seven in the evening from Sept. 20 to April 1. Children above eleven years of age, employed in winding and throwing silk, may be employed as "young persons" under the act. Young persons and females above eighteen employed during meal hours, held to be employed contrary to the act.

By an act of 1861, the 24 & 25 V. c. 117, the provisions of the above acts are extended to *lace factories*; and from August 1, 1862, to apply, with exceptions, to the employment of females, young persons, youths, and children in lace factories. In a lace factory youths between the age of sixteen and eighteen may be employed between four A.M. and ten P.M.; but not above nine hours between those hours; nor both earlier than six in the morning, and later than six in the evening on the same day; nor both later than six o'clock in the evening of any day, and earlier than six o'clock in the morning of the next succeeding day, s. 2. Agents, workmen may be summoned before a justice for acting contrary to the statute without the knowledge of the owner or hirer of

machine, s. 3. Provisions of the Factory Acts, so far as they relate to *lost time*, not to apply to lace factories. Neither are the said acts relating to the *fencing off* of *machinery* to apply to lace factories.

Generally, by 27 & 28 V. c. 48, these acts are extended to manufactories of earthenware, except bricks and tiles, not being ornamental tiles, and to the manufacture of lucifer matches, percussion caps, cartridges, and the employment of paper staining and fustian cutting. By s. 4, every factory to which the act applies is to be kept in a cleanly state, and be ventilated in such a way as to render harmless, so far as practicable, any gases, dust, or other impurities, generated in the processes, that may be injurious to health. Penalty, on neglect by the occupier, not exceeding £10 nor less than £3. But the court having jurisdiction may, instead of inflicting a penalty, make an order directing the occupier within a certain time to make the sanitary alterations required by the act.

In 1867, the acts on mills and factories were amended and extended by 30 & 31 V. c. 103, including blast furnaces and metallic works, paper, glass, and tobacco manufactories, letterpress printing and bookbinding, and generally any manufactory in which fifty or more persons are employed; and every part of a factory is deemed to be such except such part as is exclusively used as a dwelling. Fifty or more persons employed is by s. 12 prescribed as the number employed to constitute a factory. No child under eleven years of age to be employed in the metal trade, nor any female in a glass factory in which melting or annealing glass is carried on. Meals not to be taken in certain parts of a glass factory.

By the Workshop Regulation Act, 1867, 30 & 31 V. c. 146, penalties are imposed for employing any persons contrary to the act, and power is given to inspectors of factories to enter workshops and inspect them. By s. 6, no child under the age of eight years shall be employed. No child shall be employed on any one day more than six and a half hours, and those between six in the morning and eight at night. No young person or woman more than twelve hours a day, with intervening periods for meals and rest of one hour and a half, and the whole employment must be between five in the morning and nine at night. No child, young person, or woman to be employed on Sunday, or after two o'clock on Saturday. No child under eleven to be employed in grinding in the metal trades, or in fustian cutting.

The first schedule to the act contains exceptions to these regulations, some of which are temporary. The last of such temporary exceptions expired on the 21st February, 1870; others are permanent, and relate to certain customs or exigencies in certain trades, and also to the case where the occupier of any workshop is a person of the Jewish religion.

[redacted] in contravention to the regulation [redacted] the occupier of a workshop is liable to [redacted] and the parent, or person deriving [redacted] the child or such person's labour, to a penalty no [redacted] Every child must attend school at least ten hour[s] [redacted] week, and during the six years, and exclusive of Sunday[s] [redacted] or unreasonably absent, a certificate must b[e] [redacted] The parents of children employed i[n] [redacted] failing to comply with the above, will be liable to [a] [redacted] Occupiers of workshops must obtai[n] [redacted] certificates every Monday as to th[e] [redacted] children at school, which certificates employer[s] [redacted] keep for production to the inspectors. And such [redacted] must also pay for attending the per week out of each [child's] wages for the schooling. Forging or falsifying the certificate [is a] misdemeanour, punishable with three months' imprisonment [and] hard labour.

[redacted] has become the duty of inspectors and [sub-]inspectors of factories to enforce the provisions of the Factory [Act].

The young [redacted] is exempted from the Factory and Workshops [Act]. No female under the age of sixteen years, and no child under the age of ten years, is to be employed in the manufactur[e] [redacted] being ornamental files.

[redacted] establishments is to be exempted from the Factory or Wor[k]shop Acts, because the articles manufactured therein, being the property of the crown, are [redacted] Parliament. It is also provided that any such establishm[ent] [redacted] by order of the secretaries of state.

XII. MINES AND COLLIERIES.

In 1872, the Coal and Metalliferous Mines Regulation [Act] were passed for the purpose of consolidating and amendi[ng] acts relating to mines.

The Coal Mines Regulation Act (35 & 36 V. c. 76), to mines of coal, of stratified ironstone, of shale, and of [fire]. No boy under the age of ten years, and no woman or girl [of] age, is to be employed in any mine to which this act app[lies] low ground. No boy under the age of twelve is to be [employed] in any mine to which this act applies below ground, exc[ept] mine in which a secretary of state may by order gran[t] sion; nor in such case more than six days a week; or *employed* for more than three days in any week, for m[ore] *six hours* a day, or in any other case for more than te[n] day. No boy under sixteen years of age is to be em

any mine to which this act applies below ground for more than fifty-four hours a week, or more than ten hours a day, and there is to be allowed an interval of not less than eight hours between the period of employment on Friday and the period of employment on the next Saturday; and in other cases of not less than twelve hours between each period of employment. The period of employment to begin at the time of leaving, and to end at the time of returning to the surface. The week is to begin at midnight on Saturday, and end at midnight on the next Saturday.

Ss. 8, 9, 10, & 11, deal with the education of boys under twelve years of age, who are employed below ground in any mine to which the act applies.

The following provisions have effect with respect to the employment of women and children above ground in connection with any mine to which the act applies:—No child under the age of ten years is to be so employed. The regulations of this act with respect to boys of ten and under twelve years of age apply to every child so employed. The regulations of this act with respect to male young persons under sixteen years of age apply to every woman and young person so employed. No woman, young person, or child is to be so employed between the hours of nine at night and five on the following morning, or on Sunday, or after two o'clock on Saturday afternoon. Intervals for meals are to be allowed to every woman, young person, and child so employed, amounting in the whole to not less than half an hour during each period of employment which exceeds five hours, and to not less than one hour and a half during each period of employment which exceeds eight hours.

The provisions as to the employment of women, young persons, and children after two o'clock on Saturday afternoon, do not apply in the case of any mine in Ireland, so long as it is exempted in writing by a secretary of state.

A register of boys, women, and children employed as hereinbefore mentioned is to be kept by the owner. No person under *eighteen* years of age is *to have* charge of the engine, windlass, ropes, &c., connected with the entrance of a mine.

Wages may not be paid at public-houses. Ss. 17, 18, & 19, deal with the payment of persons employed in a mine to which the act applies, in cases where the amount of wages paid to them depends on the amount of mineral gotten by them. Single shafts are prohibited, except in certain cases mentioned in the act, and any agreements in contravention of the act are declared illegal. Every division that is worked separately of a mine is to be deemed a separate mine.

Certificated Managers.—Every mine to which the act applies is to be under the management of a person who is for the time

being registered as a holder of a certificate under the act. If any mine to which the act applies is worked for more than fourteen days without a certificated manager, the owner and agent is liable to a penalty not exceeding £50, and to a further penalty not exceeding £10 for every day during which such mine is so worked.

A board constituted as in the act mentioned by the secretary of state, can appoint examiners to grant certificates of competency to managers of mines. Ss. 28 to 36 deal with the constitution of this board, and with regulations as to examinations, with the grant of certificates to examiners, and with the inquiry and competency of the manager, and with the cancellation of the certificate, and with the cost and expenses of inquiry. Every person who forges, or counterfeits, or knowingly makes any false statement in any certificate of competency or service under this act, or any official copy of such certificate; or knowingly utters or uses any such certificate or copy which has been forged or counterfeited, or contains any false statement; or for the purpose of obtaining, for himself or any other person, employment as a certificated manager, or the grant, renewal, or restoration of any certificate under this act, or a copy thereof, either makes or gives any declaration, representation, statement, or evidence which is false in any particular; or knowingly utters, produces, or makes use of any such declaration, representation, statement, or evidence, or any document containing the same, is guilty of a misdemeanour, and is liable on conviction to imprisonment for a term not exceeding two years, with or without hard labour.

Ss. 38 to 40 deal with the returns to be made by owners or managers of mines, and the notice to be given of accidents in mines, and the notice to be given of the opening and abandonment of mines, and the fencing and plans of abandoned mines.

Part II. of the act deals with rules to be observed in every mine to which it applies. Such rules relate to ventilation and fencing of places not in use, stations at the entrance to the mine or to different parts of the mine, withdrawal of workmen in case of danger, safety-lamps and lights, gunpowder and blasting, water and bore-holes, man-holes, fencing of old shafts and of entrances to shafts, securing shaft roofs and sides, use of different shafts, attendance of engine-man, signalling, and various other matters connected with a mine.

A daily inspection by a competent person of every mine is directed.

Special rules are to be established in a mine for the guidance of the persons acting in the management of it, to be submitted to the secretary of state, and, if not objected to by him within

forty days after the receipt, to be established; but the secretary of state may object to the special rules.

Penalties.—Every person who is guilty of an offence against the act is liable to a penalty not exceeding, if he is an owner, agent, or manager, £20; and if he is any other person, £2. Any person can be imprisoned, with or without hard labour, for a period not exceeding three months who is convicted by a court of summary jurisdiction of having been guilty of wilful neglect endangering life or limb; but there is an appeal given to the next quarter sessions. No prosecution is to be instituted against the owner, agent, or manager of a mine for any offence under the act which can be prosecuted before a court of summary jurisdiction, except by an inspector or with the consent in writing of a secretary of state.

The Metalliferous Mines Regulations Act (35 & 36 V. c. 77) applies to every mine to which the Coal Mines Regulations Act does not apply. No boy under twelve years of age, and no girl or woman of any age, is to be employed in any mine to which the act applies below ground. The hours of employment of boys under sixteen years of age in any mines to which the act applies are the same as in coal mines, and boys so employed are subject to similar regulations; and there are similar regulations as to the register by the owner, of boys, and as to the employment of young persons under eighteen in certain ways, and as to the payment of wages in public-houses, and as to the returns of accidents in mines. There are also regulations as to the notice of opening and abandonment of mines, and as to the fencing of abandoned mines, and as to the plans of abandoned mines to be sent to the secretary of state. The second part of the act contains rules somewhat similar to the Coal Mines Regulations Act as to the working of the mines, and as to special rules for each mine. There are also similar penalties for offences against the act, and also there is similarly imprisonment for wilful neglect endangering life or limb, and the summary proceedings under the act are also similar to those under the Coal Mines Regulations Act.

The following rules relating to inspection, arbitration, and to coroners apply to all mines, either under the Coal or the Metalliferous Mines Regulations Acts:—A secretary of state may from time to time appoint any fit persons to be inspectors of mines, and assign them their duties, and may award them such salaries as the commissioners of her Majesty's Treasury may approve, and may remove such inspectors.

Notice of the appointment of every such inspector is to be published in the London Gazette.

Any person who practises or acts, or is a partner of any person who practises or acts, as a land agent or mining engineer, or as a manager, viewer, agent, or valuer of mines, or arbitrator in any difference arising between owners, agents, or managers of mines,

or is otherwise employed in or about any mine, may not act as an inspector of mines.

An inspector is empowered to make such examination and inquiry as may be necessary to ascertain whether the provisions relating to matters above ground or below ground are complied with in the case of any mine, and to enter, inspect, and examine any mine at all reasonable times by day and night, but so as not to impede or obstruct the working of the said mine; and to examine into and make inquiry respecting the state and condition of any mine and the ventilation of the mine, and the sufficiency of the special rules (if any) for the time being in force in the mine, and all matters and things connected with or relating to the safety of the persons employed in or about the mine or any mine contiguous thereto, and to exercise such other powers as may be necessary.

Every person who wilfully obstructs any inspector in the execution of his duty, and every owner and agent of a mine who refuses or neglects to furnish to the inspector the means necessary for making any entry, inspection, examination, or inquiry, is guilty of an offence.

If in any respect (which is not provided against by any express provision, or by any special rule) any inspector find any mine, or any matter, thing, or practice in or connected with any such mine, to be dangerous or defective, so as in his opinion to threaten or tend to the bodily injury of any person, such inspector may give notice in writing thereof to the owner or agent of the mine, and is to state in such notice the particulars in which he considers such mine, or any part thereof, or any matter, thing, or practice, to be dangerous or defective, and require the same to be remedied; and unless the same be forthwith remedied the inspector is also to report the same to a secretary of state.

If the owner or agent of the mine objects to remedy the matters complained of in the notice, he may, within twenty days after the receipt of such notice send his objection in writing stating the grounds thereof to a secretary of state, and thereupon the matters is to be determined by arbitration in manner provided, and the date of the receipt of such objection is to be deemed to be the date of the reference.

If the owner, agent, or manager fail to comply, either with the requisition of the notice, where no objection is sent within the time aforesaid, or with the award made on arbitration, within twenty days after the expiration of the time for objection, or time of making of the award (as the case may be), he is guilty of an offence, and the notice and award are respectively to be deemed be written notice of such offence.

Provided that the court, if satisfied that the owner, agent, or manager has taken active measures for complying with the notice or award, but has not, with reasonable diligence, been able to complete the works, may adjourn any proceedings taken before

for punishing such offence, and, if the works are completed within a reasonable time, no penalty is to be inflicted.

No person shall be precluded by any agreement from doing such acts as may be necessary to comply with these provisions, or be liable under any contract to any penalty or forfeiture for doing such acts.

The owner, agent, or manager of every mine is to keep in the office at the mine an accurate plan of the workings of such mine, and showing the workings up to at least six months previously.

The owner, agent, or manager of the mine is to produce to an inspector at the mine such plan, and if requested by the inspector, is to mark on such plan the progress of the workings of the mine up to the time of such production, and is to allow the inspector to examine the same; but the inspector is not thereby authorized to make a copy of any part of such plan.

If the owner, agent, or manager of any mine fails to keep such plan as is prescribed, or wilfully refuses to produce or allow to be examined such plan, or wilfully withholds any portion of any plan, or conceals any part of the workings of his mine, or produces an imperfect or inaccurate plan, unless he shows that he was ignorant of such concealment, imperfection, or inaccuracy, he is guilty of an offence, and further, the inspector may, by notice in writing (whether a penalty for such offence has or has not been inflicted), require the owner, agent, or manager to cause an accurate plan, such as is prescribed by this section, to be made within a reasonable time, at the expense of the owner of the mine, on a scale of not less than a scale of two chains to one inch, or on such other scale as the plan then used in the mine is constructed on.

If the owner, agent, or manager fail within twenty days, or such further time as may be shown to be necessary, after the requisition of the inspector to make or cause to be made such plan, he is guilty of an offence.

Every inspector is to make an annual report of his proceedings during the preceding year to a secretary of state, to be laid before both Houses of Parliament.

A secretary of state may at any time direct an inspector to make a special report with respect to any accident in a mine to which this act applies, which accident has caused loss of life or personal injury to any person, and in such case is to cause such report to be made public at such time and in such manner as he thinks expedient.

The following are the provisions as to arbitration :—

The parties to the arbitration are deemed to be the owner or agent of the mine on the one hand, and an inspector of mines on behalf of the secretary of state on the other:

Each of the parties to the arbitration may, within twenty-one days after the date of the reference, appoint an arbitrator:

No person is to act as arbitrator or umpire under this act who is employed in or in the management of or is interested in the mine to which the arbitration relates :

The appointment of an arbitrator is to be in writing, and notice of the appointment is to be forthwith sent to the other party to the arbitration, and is not to be revoked without the consent of such other party :

The death, removal, or other change in any of the parties to the arbitration is not to affect the proceedings under this section :

If within the said twenty-one days either of the parties fail to appoint an arbitrator, the arbitrator appointed by the other party may proceed to hear and determine the matter in difference, and in such case the award of the single arbitrator is final :

If before an award has been made any arbitrator appointed by either party die or become incapable to act, or for fourteen days refuse or neglect to act, the party by whom such arbitrator was appointed may appoint some other person to act in his place ; and if he fail to do so within fourteen days after notice in writing from the other party for that purpose, the remaining arbitrator may proceed to hear and determine the matters in difference, and in such case the award of such single arbitrator is final :

In either of the foregoing cases where an arbitrator is empowered to act singly, upon one of the parties failing to appoint, the party so failing may, before the single arbitrator has actually proceeded in the arbitration, appoint an arbitrator, who is then to act as if no failure had been made :

If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been appointed for that purpose by both arbitrators under their hands, the matter in difference is to be determined by the umpire appointed as hereinafter mentioned :

The arbitrators, before they enter upon the matters referred to them, are to appoint by writing under their hands an umpire to decide on points on which they may differ :

If the umpire die or become incapable to act before he has made his award, or refuses to make his award within a reasonable time after the matter has been brought within his cognizance, the persons or person who appointed such umpire are forthwith to appoint another umpire in his place :

If the arbitrators refuse, or fail, or for seven days after the request of either party neglect to appoint an umpire, then on the application of either party an umpire is to be ap-

pointed by the chairman of the general or quarter sessions of the peace, within the jurisdiction of which the mine is situate :

The decision of every umpire on the matters referred to him is to be final :

If a single arbitrator fail to make his award within twenty-one days after the day on which he was appointed, the party who appointed him may appoint another arbitrator to act in his place :

The arbitrators and their umpire or any of them may examine the parties and their witnesses on oath ; they may also consult any counsel, engineer, or scientific person whom they may think it expedient to consult :

The payment, if any, to be made to any arbitrator or umpire for his services is to be fixed by the secretary of state, and together with the costs of the arbitration and award is to be paid by the parties or one of them, according as the award may direct. Such costs may be taxed by a master of one of the superior courts, who, on the written application of either of the parties, is to ascertain and certify the proper amount of such costs. The amount, if any, payable by the secretary of state, is to be paid as part of the expenses of inspectors. The amount, if any, payable by the owner or agent may, in the event of non-payment, be recovered in the same manner as penalties :

Every person who is appointed an arbitrator or umpire is to be a practical mining engineer, or a person accustomed to the working of mines ; but when an award has been made under this section, the arbitrator or umpire who made the same is to be deemed to have been duly qualified as provided by this section.

The following are the provisions relating to coroners :—

Where a coroner holds an inquest upon a body of any person whose death may have been caused by any explosion or accident, of which notice is required to be given to the inspector of the district, the coroner is to adjourn such inquest unless an inspector, or some person on behalf of a secretary of state, is present to watch the proceedings :

The coroner, at least four days before holding the adjourned inquest, is to send to the inspector of the district notice in writing of the time and place of holding the adjourned inquest :

The coroner, before the adjournment, may take evidence to identify the body, and may order the interment thereof :

If an explosion or accident has not occasioned the death of more than one person, and *the coroner has sent* to the inspector of the *district notice of the time and place* of holding *the inquest not less than forty-eight* hours before the

time of holding the same, it is not imperative on him to adjourn such inquest in pursuance of this section, if the majority of the jury think it unnecessary so to adjourn.

An inspector is at liberty at any such inquest to examine any witness, subject nevertheless to the order of the coroner :

Where evidence is given at an inquest at which an inspector is not present of any neglect as having caused or contributed to the explosion or accident, or of any defect in or about the mine appearing to the coroner or jury to require a remedy, the coroner is to send to the inspector of the district notice in writing of such neglect or default :

Any person having a personal interest in or employed in or in the management of the mine in which the explosion or accident occurred is not qualified to serve on the jury empannelled on the inquest; and it is the duty of the constable or other officer not to summon any person disqualified under this provision, and of the coroner not to allow any such person to be sworn or to sit on the jury.

Every person who fails to comply with these provisions is guilty of an offence.

XIII. REGULATION OF AGRICULTURAL GANGS.

In certain counties in England are persons known as gangmasters, who hire children and women with a view to contract with farmers and others for the execution of agricultural work. The 30 & 31 V. c. 130, s. 4, prescribes the following regulations of this description of labourers: 1. No child under the age of eight years shall be employed in any agricultural gang; 2. No females shall be employed in the same agricultural gang with males; 3. No female shall be employed in any gang under any male gangmaster unless a female licensed to act as gangmaster is also present with that gang. Any gangmaster employing any child, young person, or woman in contravention of this section, and any occupier of land on which such employment takes place, unless he proves that it took place without his knowledge, shall respectively be liable to a penalty not exceeding 20*s*. for each child, young person, or woman so employed. Gangmasters to be licensed, under a penalty of 20*s*. a day acting unlicensed.

XIV. REGULATION OF BAKEHOUSES.

The 26 & 27 V. c. 40, limits the hours of labour of young persons employed in bakehouses, and makes regulations in respect of cleanliness and ventilation. Local authority defined by s. 2, and a bakehouse includes any place in which bread, biscuits, or confectionery is baked, from the baking or selling of which a profit is derived. By s. 3, no person under the age

of eighteen years to be employed in any bakehouse between the hours of nine o'clock at night and five o'clock in the morning. Penalty on the occupier or person in possession—for a first offence, not exceeding £2 ; a second offence, £5 ; third offence; for each day, not exceeding £10. In every city or place with a population of above 5,000, the inside walls and ceiling, with the passages and staircase leading thereto, either to be painted with oil or lime-washed; if painted, to be three coats of paint, renewed once at least every seven years, and washed with hot water and soap every six months ; if lime-washed, the washing to be renewed every six months. Every bakehouse to be kept cleanly, with effective ventilation, and free from the effluvium of any drain, privy, or other nuisance. Penalty not above £5. Court under the act may direct alteration in lieu of or in addition to penalty. Sleeping-places must be separated from the bakehouse by partition from the floor to the ceiling, with external glazed windows made to open for ventilation, s. 5. Local authority to enforce provisions, by any officer of health ; inspector of nuisances, or other officer appointed by them, may enter and inspect during baking hours. Refusing admission or obstructing examination, a penalty not above £20. Entry may be enforced by warrant of a justice accompanied by a police constable. Expenses to be defrayed out of rates levied under Nuisances Removal Acts. The act extends to England, Scotland, and Ireland.

XV. PAYMENT OF WAGES IN GOODS.

Efforts were made in the session of 1831 to put an end to what are termed "*tommy shops*," and the practice, so general in various counties, of paying wages in goods, in lieu of coin or bank-notes. For this purpose the 1 & 2 W. 4, c. 37, prohibits the payment of wages in goods, in the trades there mentioned : namely, to persons employed in any manufacture or process in iron or steel, or in mines of coal, iron-stone, lime-stone, and salt-rock ; in getting of stone, slate, or clay ; in making nails, chains, rivets, anvils, vices, spades, locks, or any other hardware made of iron or steel ; or any plated article of cutlery, or made of brass, tin, or other metal, or of japanned goods or wares; or in the spinning, dyeing, printing, or preparing any kind of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufacture ; or in making or preparing glass, porcelain, china, or earthenware ; or in making or preparing bone, thread, silk, or cotton lace : in all these trades, all contracts must be made, and wages paid, in coin, without any stipulation as to the manner in which wages shall be expended. But the payment of wages in notes of the Bank of England, or of any licensed banker, or in drafts payable to bearer

on demand (the workmen freely consenting to receive such drafts), is lawful.

Workmen may recover the whole or any portion of their wages not paid in coin; goods supplied by the employer, or any shop in which he is interested, not allowed to be set off against any claim for wages, nor can any employer have any action for goods supplied on account of wages; and if the workman, his wife or children, become chargeable, the overseers may recover any wages earned during the three preceding calendar months, and not paid *in cash*.

Employers entering into contracts, or paying wages otherwise than the act directs, forfeit, for the *first* offence, not exceeding £10 nor less than £5; for a *second* offence, not exceeding £20 nor less than £10; for a *third* offence, the offender is deemed guilty of misdemeanour, and may be fined any sum not exceeding £100. Penalties are recoverable by any person suing for the same, before two justices, who have power to award any portion of the penalty to the informer, not exceeding £20. A partner is not liable in person for the offence of his co-partner, but the partnership property is liable.

Nothing in the act extends to domestic servants, or any servant in husbandry. Neither do its provisions extend to any contract, payment of wages, or deduction from wages, made or done on account of medicine supplied to a workman, or victuals dressed in the house of the employer, or sum advanced for rent, or any friendly or savings bank, or during sickness, or for education of children; in all which cases contracts may be entered into, and wages paid as formerly.

This act extends to Great Britain, but not to Ireland.

XVI. MILLERS.

By the 36 G. 3, c. 85, scales are to be kept in every corn-mill, which may be examined by the persons appointed, on penalty of 20*s*. Millers are to weigh corn, if required, before and after ground, on pain of 40*s*. No corn shall be taken for toll, on pain of £5, except where the party has no money. But this does not extend to ancient mills, where a right to take toll has been established by custom or prescription. Millers are to put up in their mills a table of prices, on penalty of 20*s*. These acts do not extend to *private* mills.

XVII. CHIMNEY SWEEPERS.

By 3 & 4 V. c. 85, to compel or knowingly to allow any person under the age of twenty-one years to ascend or descend a chimney or enter a flue for the purpose of cleaning or curing it, or extinguishing a fire therein, subjects to a penalty of £10, on

less than £5. No child can be apprenticed to the trade under the age of sixteen years, and current indentures of children under sixteen may be cancelled. The act prescribes the construction of chimneys, subjecting builders to penalties for neglect. Under 4 & 5 W. 4, c. 35, *hawking* or calling in the street is prohibited, and the ill-treatment of apprentices made liable to a penalty between £2 and £10. These acts were extended, in 1864, by 27 & 28 V. c. 39, so that no child under the age of ten years do, or assist in any way about, the business of chimney-sweeping elsewhere than within the house or place of business of the employer. Chimney-sweeper entering house or building, to clean, core, or extinguish a fire in any chimney or flue, not to bring with him any person in his employ, or under his control, under the age of sixteen. Contravention of either of these enactments subjects to a penalty not exceeding £10. Where, under the act of 1840, a sweeper is convicted of knowingly allowing a person under the age of twenty-one years to ascend or descend for the purpose there mentioned, he may, instead of the pecuniary penalty, be adjudged to be imprisoned for any term not exceeding six months, with or without hard labour, s. 9. Proof of the age of any person in question to lie on defendant.

XVIII. ARTIFICERS AND LABOURERS.

The jurisdiction of the magistrates, under the laws about to be mentioned in this section, is limited to servants in husbandry, and the trades specified in the statutes, or the local district mentioned.

By the 5 Eliz. c. 4, single men between twelve years of age and sixty, and married men under thirty years of age, and all single women between twelve and forty, not having any visible livelihood, are compellable, by two justices, to go out to service in husbandry, or certain specific trades. If any artificer or labourer, retained to work by the piece, leave his work unfinished, unless it be that his wages are not paid or other *lawful* excuse, he may be imprisoned one month, and fined £5 to his employer.

Artificers and labourers hired by the day or week, shall, between the middle of March and September, be at their work at five o'clock in the morning, and continue it till between seven and eight in the evening; and between September and March, they are to be at work by break of day till night, bating the time for breakfast and dinner.

By 20 G. 2, c. 19, differences between masters and servants in husbandry, or artificers and handicrafts, colliers, keelmen, glassmen, and other labourers, may be determined by a justice of the peace, who is to examine upon oath, and make order for payment of wages, provided the sum in dispute does not exceed £10 with

regard to servants, or £5 with regard to other persons; and, on non-payment within twenty-one days, it shall be levied by distress. The 31 G. 2 extends this act to all servants employed in husbandry, though hired for less than a year.

By the 4 G. 4, c. 34, if any servant in husbandry, handicraftsman, artificer, calico-printer, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, contract, in writing, to serve, and shall not enter into such service, or shall absent himself before the term of his contract be expired (whether such contract be in writing or not), or be guilty of any misconduct or misdemeanour, he may be committed to the house of correction to hard labour for not exceeding three months; or, in lieu, the whole or a proportionate part of his wages may be abated, or he may be discharged from his contract or employment.

By 10 G. 4, c. 52, all the provisions in 4 G. 4, for enlarging the powers of magistrates in determining disputes between master and workmen, in respect of frauds in working, are extended to persons engaged in the manufactures and trades mentioned in 17 G. 3, c. 56, namely, to dyers and persons employed in the manufacture of *hats, woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair*, and *silk*.

By 2 & 3 V. c. 71, the police magistrates of the metropolis have power to settle all disputes between masters and bargemen, ballast men, coal-porters, sailors, shipwrights, or other labourers for hir on the river Thames, docks, and wharfs, provided the sum i dispute does not exceed £5.

Police magistrates have also summary authority, within the limi of the metropolis district, to compel any master, mistress, or *otl person*, who unlawfully detains the property of another, to deli the same up to the owner, provided the goods or property detai does not exceed *fifteen pounds* in value.

XIX. SERVANTS AND APPRENTICES.

By 5 Eliz. c. 4, churchwardens and overseers, with the cor of two justices, may bind or apprentice the children of the p and if any refuse to accept such poor apprentice, to forfeit £1

Justices of the sessions may hear and determine dispute tween masters and apprentices, and the sessions may quas indentures, on default either of master or apprentice. If a apprentice is discharged on account of the misconduct of the m the justices may order the master to deliver up the clothes, pay a sum not exceeding £10 to place him with another 1 32 G. 3, c. 57.

These powers are extended by the 4 G. 4, c. 29, s. 2, prentices whose premium does not exceed £25. And, by t act, when the magistrates direct an apprentice to be dis they may order the whole or a part of the premium to be r

Powers of magistrates to adjudicate where no premium has been paid, extended by 5 V. c. 7, s. 1.

A parish apprentice cannot be transferred to another or dismissed, without consent of two justices, under a penalty of £10, 56 G. 3, c. 139, ss. 9, 10.

The statute of Elizabeth, which prohibited the exercise of trades, except by persons who had been apprenticed thereto seven years, is repealed; and the term of apprenticeship is now determined by the mutual convenience of the contracting parties.

Whatever an apprentice gains is for the use of his master, and whether he was legally bound or not is immaterial, if he were an apprentice *de facto*. But this can only apply to *in-door* apprentices, not to out-door apprentices, nor to those paid by a fixed rate of wages.

An apprentice leaving his master's service must serve beyond the term for the time he was absent, if it be within seven years after the expiration of the term.

If a master give an apprentice license to leave him, he cannot afterwards recall it. And if a master discharge an apprentice for negligence, equity will decree him to refund a proportionate part of the premium.

By the custom of the City of London, a freeman may turn away his apprentice for *gaming*.

A master may correct and chastise his apprentice for neglect or misbehaviour, provided it be done with moderation; but his mistress is not entitled to the same power.

By the 4 G. 4, c. 34, s. 3, apprentices misbehaving or absconding may be punished by the abatement of the whole or part of their wages, or be committed to the House of Correction for any period not exceeding three months. In case of the absence of the master or mistress, magistrate may direct the wages due to an apprentice to be paid by the steward, manager, or overseer, to any amount not exceeding £10.

By the death either of the master or apprentice, the interest, being a mere personal trust, is determined. But, if the master covenant to find the apprentice, during the term, in necessaries and clothing, the death of the master will not determine the obligation, but his executors will be bound to perform it as far as they have assets.

Indentures of apprenticeship must be enrolled in London within one year, in the Chamberlain's office, otherwise the apprentice may sue out his discharge.

By the Mutiny Act apprentices enlisting in the army, and concealing their apprenticeship when brought before a magistrate to be attested, may be indicted for obtaining money under *false pretences*; and if after the expiration of their apprenticeship they do not surrender to a recruiting officer, they may be apprehended as deserters.

APPRENTICES TO THE SEA SERVICE.—By 17 & 18 V. c. 104, ss. 141 to 145, apprenticeships to sea service are regulated. All shipping masters under the act are obliged, if applied to for the purpose, to assist in binding apprentices, and may receive such fees as may be determined in that behalf by the Board of Trade. The indentures of boys apprenticed to sea service must be witnessed by two justices, and are to be exempt from stamp duty, but must be recorded by the registrar or shipping master, under a penalty not exceeding £10. In every union, the guardians of the poor may bind as an apprentice to the sea service any boy who, or whose parents, may be receiving relief from such union, with such boy's consent, after the age of twelve years. The master of every foreign-going ship must, before carrying any apprentice to sea, cause him to appear before a shipping master before whom the crew is engaged, and produce the indenture by which the apprentice is bound.

XX. PUBLIC BATHS AND WASHHOUSES.

For the health, comfort, and welfare of the inhabitants of towns and populous districts, the 9 & 10 V. c. 74, provides for the establishment of baths and washhouses and open bathing-places. The council of any incorporated borough may adopt this act, or any parish not within an incorporated borough may adopt it with the approval of a secretary of state. In parishes not forming part of a borough, the expenses of executing the act are to be paid out of the poor's rate, and in boroughs charged on the borough fund, or a separate rate be levied for the purpose; the income arising from the baths and washhouses being applicable towards the expenses.

On the requisition in writing of ten or more ratepayers of a parish not within a borough, a vestry meeting to be convened, seven days' previous notice of the meeting having been given, to determine whether the act shall be adopted. If vestry resolve to adopt the act, a copy of resolution to be transmitted to secretary of state; but resolution not deemed to be carried unless two-thirds of the votes given on the question, in the usual manner of voting in the vestry, shall be for the resolution. Next, the vestry shall appoint not less than three nor above seven persons, being ratepayers, commissioners for executing the act, and of whom about one-third shall go out of office yearly, but be eligible to immediate reappointment; but any commissioner may resign on giving seven days' notice, and the vacancy be filled up by the vestry. Commissioners to meet at least once a month. Two to be a quorum if only three commissioners, and not less than one-third if a greater number. Commissioners may appoint and remove officers, and, with the approval of the vestry, fix salaries. Minutes of proceedings to be kept, to be open to the inspection of ratepayers, and auditors to be yearly appointed by the vestry. Commissioners

made a body corporate with a common seal, and may sue and be sued in their corporate name. Two or more parishes may concur, with the approval of the secretary of state, for the establishment of baths and washhouses, with a joint commission and expenditure, as agreed upon.

In boroughs, the management of the baths and washhouses is vested in the council; in parishes not within boroughs, in the commissioners. The council, with the approval of the lords of the Treasury, and commissioners with the approval of the Treasury and vestry, may borrow money for the purposes of the act. Corporate lands and parish lands, with consent of the Treasury, may be appropriated to the purposes of baths and washhouses. Council and commissioners may enter into contracts; but no contract above £100 to be entered into without notice in the newspaper, so as to be open to competition. Existing baths and washhouses may be purchased or taken on lease. Council and commissioners may make by-laws for regulating the use of the baths and washhouses, and the charges for the same; and may fix any penalty not exceeding £5 for any breach of by-laws, either by officers or others. By-laws to be approved of by secretary of state. The number of baths for the labouring classes in any building not to be "less than twice the number of the baths of any higher class if but one, or of all the baths of any higher classes if more than one, in the same building or buildings." For the recovery of charges for the use of the washhouses, clothes may be detained by the officers, and if not paid within seven days, be sold. Penalty on an officer for taking fees beyond salaries, or being interested in any contract, £50. This extends to England only. But by 9 & 10 V. c. 87, its provisions are extended to Ireland.

By 10 & 11 V. c. 61, the subjoined schedule of charges has been established:—

Baths for the labouring classes, supplied with clean water for every bather, or for several children bathing together, and in either case with one clean towel for every bather:—

For one person above eight years old:
- Cold bath, or cold shower-bath, any sum not exceeding 1*d.*
- Warm bath, or warm shower-bath, or vapour bath, any sum not exceeding 2*d.*

For several children, not above eight years of age, nor exceeding four, bathing together:
- Cold bath, or cold shower-bath, not exceeding 2*d.*
- Warm bath, or warm shower-bath, or vapour bath, not exceeding 4*d.*

For baths of a higher class such rate of charges may be fixed as the council and commissioners think fit, not exceeding in any

... that the charges above mentioned for the several kinds of ... for the labouring classes.

Washhouses for the Labouring Classes. — Every washhouse to ... with conveniences for washing and drying clothes and other articles. For the use, by one person, of one washing ... trough, or one pair of washing tubs or troughs for one ... in one day, not exceeding 1*d.*; for two hours, not exceeding 2*d.*

Washhouses of a higher class to be charged for as the council think fit.

Open bathing-places, where several persons bathe in the same water, for one person 1*d.*

See further, 21 & 22 V. c. 98; 23 & 24 V. c. 30; 29 & 30 V. c. 90.

XXI. LABOURERS' DWELLINGS.

The Labourers' Dwelling Act, 1875, the 18 & 19 V. c. 132, is for facilitating the erection of dwelling-houses, with or without gardens or parlour in common, for the labouring classes, by the incorporation of any number of persons not less than six, subscribing capital of several amounts specifying the amount of his ... and a covenant is implied on his part finding his ... in land or stock. Dwellings erected to be subject to inspection by the General Board of Health.

In Ireland an act to provide better dwellings for artizans and ... (31 & 32 V. c. 13) was passed.

The officer of health is to report as to the condition of streets, and to deliver copies to the clerk of the local authority, which local authority is to cause copies of the report to be given to the owner, and may object to them: if the objections are overruled a plan and specification of the works necessary to put the street or ... in proper repair must be prepared. The owner may appeal from the decision of the local authority to some justice of the peace. For further information see the act.

XXII. LODGING-HOUSES FOR THE LABOURING CLASSES.

The preamble to 14 & 15 V. c. 34, states that it is "desirable for the health, comfort, and welfare of the inhabitants of towns and populous districts, to encourage the establishment therein of well-ordered lodging houses for the labouring classes," and provides that the act may be adopted in any incorporated borough under 5 & 6 W. 4 (p. 182), or in any district of a local board of health, or in any place within the limits of an improvement act, or in any parish, with the approval of secretary of state, having

population of 10,000 inhabitants, in or any parish in a borough of like population.

Council of a borough may adopt the act, and expense of carrying it into execution to be charged on the borough fund, for which a rate may be levied; the income arising from the lodging-houses to be carried to the same fund, in a separate account. Local boards of health may adopt the act, but must give not less than 28 nor above 42 days' notice of a meeting to consider its provisions; if at the meeting one-tenth in value of the persons liable to be rated to a general district rate made by the board request postponement, such postponement to be allowed till after next day, for election of the members of the board (s. 7). If majority of board be elected in other manner than by ratepayers under an improvement rate, act not to be adopted without consent of such ratepayers. Expenses of carrying act into execution by improvement commissioners to be charged on the improvement rates.

By s. 14, on the requisition in writing of ten or more ratepayers of a parish, the churchwardens to convene a meeting of the vestry to determine whether the act shall be adopted; notice of meeting in three successive weeks to be given; if vestry resolve to adopt act, resolution to be sent to secretary of state; but resolution not to be deemed carried unless two-thirds in value vote for it; when adopted, three or not more than seven commissioners to be appointed by the vestry to carry act into execution; one-third, as near as possible, of the commissioners to retire annually; but eligible to immediate re-election. Vacancies to be filled up by the vestry. Overseers to levy as part of the poor-rate the needful sums for expenses. Vestries of two or more parishes may agree to adopt the act, with approval of Home office. Commission to be a body corporate and their acts valid, despite of informalities (s. 30). Borough councils may borrow money for the act, with approval of Treasury. Parish lands, in certain cases, may be appropriated for the purposes of the act (s. 35), or contracts made for the purchase of them. Councils and commissioners to erect lodging-houses or purchase existing ones. Councils and commissioners not personally liable; the latter cease to be a corporation on the cessation of their duties. By-laws for regulations of lodging-houses to be made with approval of home secretary and hung up in every room. Lodging-houses to be open to inspection by local boards of health. Clerks or other officers accepting fees, or being concerned in contracts, liable to a penalty of £50.

This act does not extend to Scotland.

XXIII. COMMON LODGING-HOUSES.

A common lodging is any house, not being a licensed victualler's, let wholly or in part at a daily or weekly rent not exceeding

3s. 6d. per week; or in which persons are lodged, for hire, for a single night, or for less than a week at one time; or in which any room let for hire is occupied by more than one family.

Common lodgings were regulated by an act of 1851, the 14 & 15 V. c. 38; but it provides that if only part of a house be so used, such part only shall be considered a common lodging-house. The act does not extend to Scotland or the city of London. Its execution within the metropolitan police district is vested in the police commissioners of the metropolis; in the country, in municipal corporations, or local boards of health, or, where none such, in justices of peace, acting in petty sessions.

Expenses of executing the act in the metropolis to form part of the general expenses of the police acts; in the country, to be charged under the expenses of the local boards of health, or the borough fund, or improvement act, or if executed by justices, to form part of the general expenses of the constablewick of the place.

By s. 6, notice is to be given to the keepers of common lodging-houses, by the local authority administering the act, that unless their houses be registered, they will be liable to a penalty of £5 for every lodger taken pending non-register. Register to be kept by local authority, specifying situation of house, and number of lodgers allowable to be kept. Houses to be inspected, and lodgers not to be taken till one month after notice given. Regulations may be made by local authority within the limits of the Board of Health Act, and fines levied for neglect of them. If fever, or any contagious or infectious disease, be in a house, notice must be given by keeper to some officer of local authority, and also to the poor-law medical officer, and relieving officer of the union or parish. Keeper of lodging-house thoroughly to cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cesspools, and drains, to the satisfaction and conformable to the regulations of local authority, and limewash the walls and ceilings in the first week of the months of October and April in every year, s. 13. Penalty on keeper for neglect of regulations or for not giving notice if any person be confined to his bed by fever, or infectious or contagious disease, 40s. for every day the offence continues; penalty irrespective of other penalties in other acts for like offences.

The provisions of the above act have been extended by 16 & 17 V. c. 41. All common lodging-houses are to be registered before being used, and to be kept only by registered keepers. Local authority may refuse to register houses, if keeper do not produce certificate of character signed by three inhabitant householders within the parish, each rated to the value of six pounds or upwards. Local authority empowered to require an additional supply of water to common lodging-houses. By s. 7, provisions are made pertaining to removal of sick lodgers to hospitals, &c.

Reports may be ordered from keepers of houses. Town councillors, &c., required to remove causes of complaint, certified under Nuisances Removal Act, &c. Keepers of common lodging-houses, for a third offence, may be disqualified for keeping the same for five years (see *post*, Part VI. Public Health, and 29 & 30 V. c. 90).

CHAPTER XXVII.

Hawkers, Pedlars, and Old Metal Dealers.

HAWKERS are itinerant traders, who proclaim their wares through the streets or from town to town. A *pedlar* is a hawker who deals in trifling or inferior commodities. Either from a regard to the revenue laws, or from a desire to encourage the more open and regular pursuits of the settled trader, the legislature has shown considerable jealousy of hawkers and pedlars, and placed their avocations under strict penal regulation.

By the 52 G. 3, c. 108, no person being a trader in any goods, wares, or manufactures of Great Britain, and selling the same by *wholesale*, shall be deemed a hawker; and all such persons or their agents, selling by *wholesale* only, may go from house to house, to any of their customers who sell again by wholesale or retail, without being subject to any of the penalties contained in any act touching hawkers, pedlars, and petty chapmen.

By 22 & 23 V. c. 36, a hawker's license is not required by the maker or worker of goods, who carries them abroad or exposes them to sale. S. 4 empowers justices, on conviction of a hawker, to mitigate the penalty to one-fourth.

A *single* act of selling, as a parcel of handkerchiefs to a particular person, is not sufficient to constitute a hawker within the meaning of the statute, *Rex* v. *Little*, *Bur.* 613.

Hawkers exposing their goods to sale in a market town must do so in the market-place, 4 *T. R.* 272.

The Pedlars Act, 1870 (33 & 34 V. c. 72), regulates the trade at present. Since the commencement of the act no one is allowed to act as a pedlar without a certificate, nor is any one to act in any district in which he is not authorized to act by his certificate, under a penalty of 10*s.* for the first, and £1 for every subsequent offence. A certificate is to be granted by the chief officer of police of the district to any applicant residing in the police district, and of good character. The certificate is not to cost more than sixpence, and is to be in force for a year. It may be extended by indorsement by other chief officers of police to their respective districts, at a *charge of not more than* sixpence for each indorsement. *A register of certificates is to be* kept in each

district. Penalty for assigning or borrowing certificate, 20s., and for forging certificate, £2 for the first, and imprisonment not exceeding six months, with or without hard labour, for every subsequent offence. A record of any conviction of a pedlar under the act to be indorsed on certificate. No certificate to be granted to any person convicted of felony, or of any misdemeanour involving dishonesty. An appeal against refusal of certificate can be made to a justice of the peace.

DEALERS IN OLD METAL.

For the better protection of merchant shipping against fraudulent practices in respect of marine stores, this class of dealers are regulated by an act of 1861, the 24 & 25 V. c. 110, under which they are required to keep a register of purchases and sales. They must also give notice of change of place of business; they must not buy except between the hours of 9 A.M. and 6 P.M., nor of any person under sixteen years of age; they must give notice to the police without delay of the purchase of any article of which information has been given that it has been stolen or embezzled; and they must not alter the form, in any way, of articles purchased for a period of forty-eight hours after being received. These provisions are enforced by penalties, extending to imprisonment with hard labour.

By s. 13 of the Prevention of Crimes Act, 1871 (34 & 35 V. c. 112), any dealer in old metals, who either personally or by any servant or agent purchases, receives, or bargains for any lead or any composite, the principal ingredient of which is lead, whether new or old, in any quantity at one time of less than 112 lbs. in weight, or for any copper, brass, tin, pewter, German silver, or any composite the principal ingredient of which is one of the last-mentioned metals, whether new or old, in any quantity at one time of less than 56 lbs. in weight, is made liable on conviction to a penalty not exceeding £5.

CHAPTER XXVIII.

Army, Militia, Volunteers, and Navy.

I. ARMY.

THE crown, with regard to military offences, has considerable legislative power; for the sovereign, by the Annual Mutiny Act, may form articles of war and constitute courts-martial, with power to try crimes by such articles, and inflict penalties by judgment of the same, not inconsistent with the provisions of the Mutiny

Act, nor extending to transportation, or to *life* or *limb*, except for crimes expresaly declared to be so punishable by the act.

The Mutiny Act comprises a series of regulations which are annually enacted by the imperial parliament for the government of the military forces of Great Britain and Ireland. It was first passed in 1689, from which period it has varied in many of its provisions, but has been uniform in all its principal points: such as the dependence of a standing army on the consent of parliament, and the subjection of military men generally to the responsibilities and processes of the ordinary law.

By the Mutiny Act, it is provided that every officer or private who shall excite or join any mutiny, or knowing of it shall not give notice to the commanding officer, or shall desert, or enlist in any other regiment, or sleep upon his post, or leave it before he is relieved, or hold correspondence with a rebel or enemy, or strike or use violence to his superior officer, or disobey his lawful commands, the offender shall suffer death or such other punishment as the court-martial may inflict.

The Mutiny Act, as already stated, does not exempt the military from being proceeded against by the ordinary course of criminal justice; and any officer or private guilty of any crime must be delivered over to the civil power: a commanding officer refusing or neglecting would be cashiered.

No court-martial now has power, for any offence committed during the time of peace within the Queen's dominions, to sentence any soldier to corporal punishment, provided that any court-martial may sentence any soldier while on active service in the field, or on board any ship not in commission, to corporal punishment for mutiny, misbehaviour, or neglect of duty.

A court-martial may sentence to death, penal servitude, or imprisonment, with or without hard labour, according to the nature of the offence. A common-law court cannot, as a court of review or error, affect the position of the court-martial.

By the Mutiny Act, 33 V. c. 7, s. 88, officers destroying game or fish in or near where they may be quartered in the United Kingdom, without leave from those entitled to grant leave, to forfeit £5.

A person receiving enlistment money from an officer or soldier attested and on the recruiting service, is declared duly enlisted; but, on application to a magistrate within four days after, and the payment of 20*s.* with expenses, he may be again discharged.

In 1852, a person upon whom a soldier had been billeted, instead of accommodating the soldier in his own house, offered to provide him with quarters elsewhere; but the soldier refused to avail himself of it, and brought an action for billet-money. The justices were unable to come to a decision, and they agreed to refer the case to the secretary at war. In the answer received from the War Office, the magistrates were informed that the householder upon

whom the soldier had been billeted was not bound to receive soldier into his own house ; and that, having offered to pro quarters for him elsewhere, the householder had satisfied obligations imposed upon him by law.

EXEMPTIONS OF THE MILITARY FROM CIVIL LIABILITIES.—person who enlists into the regular army contracts to serve eit at home or abroad in his military capacity, and at any time services may be required. To enable him more effectually to f these engagements, and prevent his being withdrawn from duties, the law has conceded to him certain privileges, not enjo by the rest of the community. For instance, he is not bound any contract by parol or in writing, or punishable for leaving work or employer ; nor is he liable to be arrested or summoned any debt under £30, nor to be prosecuted for offences by the c power, except on charges of felony or misdemeanour. These emptions have been continued by the Mutiny Act of 1873 ; the clause by which it was provided, that no soldier shall be ceeded against for "not maintaining his family, or for ha deserted any wife, child, or children, legitimate or illegitimate other relation, &c.," was left out in the Mutiny Act, 1872, has not since been continued.

The Mutiny Act is applicable to all persons employed in the cruiting service ; to the forces intended for service in India w in any part of the United Kingdom, and till their arrival in territories of Hindostan ; to the officers and men employed in service of the artillery or engineers, in the corps of sappers miners ; to the military surveyors and draughtsmen in the nance department ; and to foreign troops serving in any part of British dominions. A separate act applies to the Royal Ma forces while on shore. The Mutiny Act applies to officers hol rank by brevet, but not to such as are on half-pay. It does extend to the militia, forces or yeomanry, or volunteer corp Great Britain or Ireland.

Questions of naval prize-money in England are adjudicated by courts of Admiralty. Army prize-money is regulated by 2 & 3 W c. 53, which enacts that all captures shall be disposed of as crown shall direct. Deserters entitled to prize-money not to rec the same ; but such shares, and those unclaimed within six y after being paid to the treasurer of Chelsea Hospital, to be forfei unless upon good cause shown and allowed by the commissione the hospital. Appraisements and sales to be made by agents pointed by the commanders and the other commissioned offi Penalty on any other person sharing, and on agents permi others to share, in the commission or emolument in respect of age £100 ; and double the amount of agency allowed to be taken. certified list of the persons entitled to share in captures t transmitted to Chelsea Hospital by the commanding officer. Pe for altering names, £500. Agents to collect and convert into m

the proceeds of prize and capture, and within one month remit the same, together with account of sales. Agents or other persons wilfully delaying the payment to Chelsea Hospital shall pay interest after the rate of £1 per cent. per month, to be shared amongst the captors, and to forfeit to Chelsea Hospital £500. Agency per-centage not to exceed 1½ per cent., exclusive of brokerage and all other charges. The treasurer, at the end of three months from receipt of prize-money, to give notification in the *London Gazette*, and in two London morning newspapers, of distribution at the end of one month, and to notify the amount of a share of an individual in each class, and to continue to publish such notifications twice a week. Shares of prize-money due to non-commissioned officers or soldiers, to be paid, upon their personal application, or to wife or child, father or mother, brother or sister, or to the regimental agent of the regiment, or to any other regimental agent, as directed in a schedule. No fee to be taken on paying any share, under penalty of £100. Persons employed by the hospital, acting as prize-agents, to forfeit £500. In all joint expeditions by army and navy, immediately after adjudication by any Admiralty court, the share of the army to be paid over to the hospital. Personations or forgeries wrongfully to obtain prize, punishable by transportation for life, or not less than seven years.

Section 25 of this act is repealed by 27 & 28 V. c. 36, and the commissioners of Chelsea Hospital may in any case, if they think fit, authorize their treasurer to pay the share of prize-money, not exceeding £50, belonging to any deceased officer, soldier or other person, to any person showing himself, to the satisfaction of the commissioners, to be entitled thereto or to shares thereof, without probate of the will or letters of administration to the estate of such deceased person being obtained or taken out.

A soldier is invested with all the rights of other citizens, and is bound to all the duties of other citizens; and he is as much bound to prevent a breach of the peace or a felony as other citizens, *Burdett* v. *Abbott*.

By the 37 G. 3, c. 70, amended by 1 V. c. 91, to attempt to seduce any person serving in the army or navy from his allegiance, or to incite any one to commit any act of mutiny, is punishable with transportation (now penal servitude) or imprisonment for three years. And whoever shall administer any unlawful oath, or shall take any *oath* or *engagement* intended to bind them in any mutinous or seditious society, or to obey any committee, or any person not having legal authority, is guilty of felony, and may be transported for seven years, for which penal servitude is now substituted.

Soldiers on active service, and mariners and seamen when at sea, may make *verbal* wills, and dispose of their wages and personal chattels without the forms which the law requires in other cases.

Neither the full nor future half-pay of a military or naval officer is assignable, *Lidderdale* v. *Duke of Montrose*, 4 *T. R.* 248. But, in case of insolvency, a portion of such pay may be sequestrated under the order of the court, with the consent of the secretary at war, or of the lords of the Admiralty.

PERIODS OF ENLISTMENT.—By the Army Enlistment Act, 1870, no person can be enlisted as a soldier for a longer term than twelve years. This act provides that enlistments shall be as follows, either (1) For the whole of the said period in any service; or (2) For a portion of the said period, to be fixed from time to time by the secretary of state, and specified in the attestation paper, in army service, and for the residue thereof in the first class of the reserve force, established under the provisions of the Reserve Force Act, 1867, but nothing in this clause shall interfere with the power of her Majesty to enlist men for a less period than twelve years in army service alone. The secretary of state may, from time to time, by general or special regulations, vary the conditions of service, so as to permit a soldier who has served not less than three years in army service, with such soldier's free assent, either (1) To enter the reserve force at once, for the residue unexpired of his term of twelve years; or (2) To extend his army service for the residue unexpired of his term of twelve years. It shall be lawful for her Majesty, in case of imminent national danger, or of great emergency, the occasion being first communicated to Parliament, if Parliament be then sitting, or declared by proclamation, in pursuance of an order of her Majesty in council, if Parliament be not then sitting, to direct that any soldier enlisted under this act shall, at any time within the period of twelve years for which he has been enlisted, continue in, or re-enter upon, army service, for such periods from time to time, not exceeding in the whole the unexpired residue of the term of his enlistment, as her Majesty may determine; and upon such order being issued, every soldier to whom it applies shall be bound to obey the same, in the same manner as if it had formed part of this act. When any such soldier is directed to re-enter upon army service under this section, it shall be lawful for the military authorities to attach him to any regiment of that arm or branch of the service in which he has previously served.

RESERVE MILITARY FORCE.—The Reserve Force Act, 1867, provides that it shall be lawful for her Majesty to cause to be enrolled, and kept up as a reserve force in the United Kingdom, any number of men, not exceeding in the whole 50,000 men, such men to be divided into two classes, not exceeding the respective numbers, and to consist of the description of persons, and to be liable to the different services, hereinafter respectively mentioned (that is to say):—*Class I.* not to exceed 20,000 men, to be liable when on permanent service to serve in the United Kingdom or elsewhere, and to consist of men who are serving or have served in any of

her Majesty's regular forces, and whose past service has not exceeded the first term of enlistment. *Class II.* not to exceed 30,000 men, to be liable when on permanent service to serve only in the United Kingdom, and to consist of persons already enrolled in the United Kingdom, out-pensioners of Chelsea Hospital, out-pensioners of Greenwich Hospital, having served in the Royal Marines, persons who are serving or who have served in any of her Majesty's regular forces, and who have so served for not less than the full period of the first term of enlistment.

Subject to the express provisions of the act, as to the extent and nature of their service, the reserve force may be formed into such corps, and may be attached to such regiments of any of her Majesty's other forces as her Majesty may from time to time direct. The men to be enrolled as aforesaid shall be engaged to serve for such term, or respective terms of years, as may be directed by the regulations made under the act.

By a royal warrant, dated the 20th day of July, 1871, all regulations regulating or fixing the prices at which any commissions in her Majesty's forces may be purchased, sold, or exchanged, or in any way authorizing the purchase, or sale, or exchange for money of any such commissions, from and after the 1st day of November, 1871, have been cancelled and determined.

By "The Regulation of the Forces Act, 1871" (34 & 35 V. c. 86), it is enacted, that every officer holding on November 1, 1871 ("the appointed day"), a saleable commission in her Majesty's army, shall, on his retirement under the circumstances hereinafter mentioned, be entitled, in respect of such commission, to receive, on application to the commissioners appointed under the act, such price or sum as is hereinafter mentioned, that is to say:—

1. Where such officer is permitted to retire from a regiment in the army under circumstances in which, if the said royal warrant had not issued, he would have been permitted to retire by sale of his commission:

He shall be entitled to receive a sum equal to the estimated price at which the commission held by him on the said appointed day would have been saleable if the said royal warrant had not issued.

2. Where such officer is permitted to retire on full pay, or to go on half-pay, on promotion or otherwise, and proves to the satisfaction of the commissioners that he would, if the said royal warrant had not issued, have on such retirement received according to the custom of his regiment a certain sum of money:

He shall be entitled to receive the over-regulation price of the commission which was held by him on the said appointed day.

3. Where such officer, being on half-pay, is permitted to retire from the army by commutation of his half-pay, and proves to the satisfaction of the commissioners that if the said royal warrant had not issued he would have been eligible, by the regulations of

the army in force at the time of the passing of the act, for retirement by sale of his commission, whether on exchanging to full pay or otherwise t

He shall be entitled to receive such sum, if any, as, in addition, to the sum paid by the commutation board under "The Pensions Commutation Act, 1869," will amount to the regulation price of the saleable commission held by him on the said appointed day.

"The estimated price at which a commission would have been saleable if the said royal warrant had not issued," shall be the regulation price of such commission, together with the over-regulation price, if any.

"The regulation price of a commission," shall mean the price authorized to be given or received in respect of such commission by her Majesty's warrant for the pay and promotion of the army, and the regulations of the army in force at the time of the issuing of the said royal warrant, and in the case of an officer holding, on the said appointed day, a commission, the full price of which (if such commission were sold on that day) he would not be entitled to receive, shall include any allowance made in respect of such commission by the said warrant and regulations on account of service, whether performed before or after the said appointed day.

"The over-regulation price" of a commission in any regiment shall be the customary sum, if any, payable in that regiment beyond the regulation price on the occasion of such commission being vacated, and shall be determined by the commissioners, as nearly as may be, according to the custom prevalent in the regiment prior to the 1st day of January, 1871.

This act also provides for special payments to be made in some cases of long service, and for compensation to be made to the officers of certain (late) Indian regiments.

"The Regulation of the Forces Act, 1871," also provides, that after a day to be named by order of her Majesty in council, all jurisdiction, powers, duties, command, and privileges, over, of, or in relation to the militia, yeomanry, and volunteers of England, Scotland, and Ireland, or any of such forces, or any part thereof, vested in or exercisable by the lieutenants of counties, or by the lord-lieutenant of Ireland, either of his own motion or with the advice of the Privy Council in Ireland, shall revert to her Majesty, and shall be exercisable by her Majesty, through her secretary of state, or any officers to whom her Majesty may, by and with the advice of her said secretary of state, delegate such jurisdiction, powers, duties, command, and privileges, or any of them, or any part thereof; saving nevertheless to the lieutenants of counties, and to the Lord-Lieutenant of Ireland, their jurisdictions, powers, duties, and privileges in relation to the appointment of deputy-lieutenants, and saving also to the lieutenants of counties, their jurisdictions, powers, duties, and privileges in relation to the

raising of the militia by ballot, and the proceedings incidental thereto.

Commissions or first appointments to the rank of cornet, ensign, or lieutenant in any regiment or corps of militia, yeomanry, or volunteers shall be given to persons recommended by the lieutenants of the county to which such regiment or corps belongs, if a person approved by her Majesty is recommended for any such commission or appointment by such lieutenant within thirty days after notice of a vacancy for such commission or appointment has been given to such lieutenant by the said secretary of state by letter addressed to him by post.

It is also provided that, when her Majesty, by order in council, declares that an emergency has arisen in which it is expedient for the public service that her Majesty's government should have control over the railroads in the United Kingdom, or any of them, the secretary of state may, by warrant under his hand, empower any person or persons named in such warrant to take possession in the name or on behalf of her Majesty of any railroad in the United Kingdom, and of the plant belonging thereto, or of any part thereof, and may take possession of any plant without taking possession of the railroad itself, and to use the same for her Majesty's service at such times and in such manner as the secretary of state may direct; and the directors, officers, and servants of any such railroad shall obey the directions of the secretary of state as to the user of such railroad or plant as aforesaid for her Majesty's service.

There shall be paid to any person or body of persons whose railroad or plant may be taken possession of, full compensation for any loss or injury they may have sustained thereby.

This act also enables militia and volunteer corps to acquire land for any necessary purposes.

DUELLING IN THE ARMY.—The practice of duelling having ceased to be in accordance with the reason and humanity of the age, endeavours have been made by the commander of the forces to check the resort to arms for the settlement of quarrels. In 1844 the following three new articles of war were issued, with a view to the abatement of duelling in the army:—

1. Every officer who shall give or send a challenge, or who shall accept a challenge, to fight a duel with another officer, or who, being privy to an intention to fight a duel, shall not take active measures to prevent such duel, or who shall upbraid another for refusing or for not giving a challenge, or who shall reject or advise the rejection of a reasonable proposition made for the honourable adjustment of a difference, shall be liable, if convicted before a general court-martial, to be cashiered, or suffer such other punishment as the court may award.

2. In the event of an officer being brought to a court-martial for having acted as second in a duel, if it appear that such officer exerted himself strenuously to effect an honourable adjustment of

the difference, but failed through the unwillingness of the adverse parties, then such officer is to suffer such punishment as the court shall award.

3. Approbation is expressed of the conduct of those who, having had the misfortune to give offence to, or injure or insult others, shall frankly explain, apologize, or offer redress for the same, or who, having received offence, shall cordially accept frank explanation or apologies for the same; or, if such apologies are refused to be made or accepted, shall submit the matter to the commanding officer; and, lastly, all officers and soldiers are acquitted of disgrace or disadvantage who, being willing to make or accept such redress, refuse to accept challenges, as they will only have acted as is suitable to the character of honourable men, and have done their duty as good soldiers who subject themselves to discipline.

By the Military Force Localization Act (35 & 36 V. c. 68), the secretary of state for the War Department is empowered to proceed to carry into effect the purposes of this act (which purposes relate to the building barracks and otherwise localising certain military forces), and with such view, may acquire such lands, and execute such works, as he may deem expedient.

The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, are incorporated with this act, with certain exceptions and additions, and subject to certain provisoes therein contained.

The sum of money to be expended on the purposes of this act is not to exceed three million five hundred thousand pounds, to be provided out of the Consolidated Fund.

II. MILITIA.

The militia consists of that description of military force who are chosen by ballot, or by the act of 1852 by voluntary enlistment, to serve a certain number of years within the limits of the realm. While placed on general military duty, there is scarcely any difference in the laws to which they are answerable from soldiers of the line; but while they are merely called out for annual training, they are subject to no punishment which affects life or limb.

By 15 & 16 V. c. 50, the acts relative to the militia in England are consolidated and amended, and a militia force of 80,000 men may be raised and increased in case of invasion, or imminent danger of invasion, to 120,000. The act first provides for voluntary enlistment to serve for five years, and, to encourage it, authorizes a bounty not exceeding £6 to be paid to each person enlisting, and the bounty may be paid either at once or by instalments of 2*s.* 6*d.* a month. Period of training and exercise not to exceed twenty-one days in one year; such twenty-one days may be at once or several times. But by order in council, training may be discontinued in England and Wales, or the time of training extended or reduced. The quotas for each county to be fixed by order in

council, and where the number of men fixed for any county, riding, or place, has not been enrolled by voluntary enlistment, her Majesty in council may order them to be raised by ballot, from which the subdivisions and parishes in which the full number of volunteers has been raised are to be exempt, and persons above thirty-five years of age are not liable to the ballot. Members of the senate, examiners, professors, tutors, lecturers of the university of London; or of any college, school, or institution; or students, duly matriculated and actually receiving education, and resident members of the university of Durham, or of the colleges of St. David, Lampeter, or St. Bees, are also exempt. Lists of persons liable to be balloted for, with a statement of the place and time of appeal, are to be affixed to every church and chapel door of the parish or place for which the ballot is to be made. Her Majesty may direct into what regiments the militia shall be formed, and with what officers and staff, and may extend or reduce the period of training or exercise to not more than fifty-six or less than three days in a year. The act also contains provisions with regard to the qualifications of officers and the regulations as to age, height, and bounty-money, which may be issued by a secretary of state, such regulations to be laid before parliament, if sitting, within twenty-one days after the making thereof. Militia of the city of London to continue to be raised as heretofore, under 1 G. 4; the act does not extend to Scotland, nor to yeomanry and volunteer corps in Great Britain.

Under former acts, the militia could only be drawn out and embodied in cases of invasion, or imminent danger thereof, or in case of rebellion or insurrection; but by 17 & 18 V. c. 13, the militia, in whole or part, may be drawn out and embodied whenever the country is in a state of war with any foreign power. By s. 2, the time of training may be extended after a corps has been called out. The time spent in drill previously to the assembling of a corps for training and exercise not to be reckoned any part of the fifty-six days for training and exercise. Notice of the time and place of meeting to be sent by the commanding officer, by post, to the residence of the men, as stated in their attestations, and to be deemed sufficient.

By 33 & 34 V. c. 68, the militia may be called out in any case of imminent national danger or great emergency.

By 17 & 18 V. c. 105, s. 31, innkeepers and others are made liable to have the permanent staff of the militia when disembodied billeted upon them, and required to find lodging, with fire and candle, as under the Mutiny Act. A militia volunteer fraudulently re-enlisting as a militiaman, enrolling or offering to enrol himself before the expiration of his service in any regiment or corps, subject to a penalty of £10, or imprisonment with hard labour for three months. Payment of bounty may be withheld from men for misconduct, or absenting themselves

without leave from training. Buying or receiving in exchange the arms, clothes, or other regimental necessaries of a militiaman, liable to a penalty of £10, or imprisonment with hard labour for six months. Militia volunteers, while under instruction in the army, subject to the Mutiny Act.

The 22 & 23 V. c. 38, amends the 51 G. 3, c. 118, relative to the interchange of militia between England and Ireland, and the periods of service. Voluntary offers of the militia to serve in the Channel Islands may be accepted. Volunteers fraudulently re-enlisting made subject to stoppages and to serve in any regiment.

By 23 & 24 V. c. 120, general meetings of lieutenancy may on requisition of secretary of state alter the existing subdivisions. Quota of militia to serve for subdivisions to be fixed by order in council. Secretary for war to apportion deficiency among subdivisions, and certify numbers to be raised, regard being had in apportionment to the number of men actually serving who, when enrolled, were resident in each subdivision or parish. By s. 5, lord-lieutenant to appoint places for subdivision meetings. Notice to be given to householder and every separate occupier of a house, to fill up a schedule, with name of every man dwelling therein between the age of eighteen and thirty, distinguishing those claiming exemption, and the ground of the claim. Penalty on occupiers not making return within five days, or knowingly a false return, £5. Lists, as per schedule, to be made out from return by overseers within fourteen days. Vestry meetings to be called in each parish to determine on providing volunteers under 42 G. 3, c. 90, s. 42. A balloted man may produce a substitute of the requisite age and height. A balloted man not appearing to be sworn liable to a penalty from 40*s.* to £10. Exception in favour of Quakers as in former acts.

See further 26 & 27 V. c. 12; 32 & 33 V. c. 13. The latter act abolishes the property qualification of officers.

An act of 1863, the 26 & 27 V. c. 57, consolidates and amends the acts relative to *regimental debts* and the distribution of the effects of officers and soldiers in case of death, and makes provision for cases of desertion and insanity. Personal estate of officer or soldier deemed the remnant after discharge of expenses of illness, funeral, mess, bond, and other preferential and regimental accounts, s. 4. Committee of officers to secure effects. In India, committee to deliver over effects to administrator-general. Disposition as to residue exceeding or not exceeding £100, ss. 14, 15. Residue undisposed of for five years, to be applied towards the Compassionate Fund, s. 18. Medals and decorations to be disposed of by royal warrant. On desertion, committee of officers to sell effects and defray expenses and preferential charges. Absence without leave to be deemed a deser-

tion. In case of insanity, committee to secure effects and apply them to pay preferential charges.

By 31 & 32 V. c. 76, amended by 32 & 33 V. c. 66, the pay of the *permanent staff* of the militia when disembodied is fixed according to a scale contained in the last-mentioned act. Members of the staff to reside in places appointed by secretary of state for war, and be subject to the Mutiny Act. By s. 27 of 31 & 32 V. c. 76, deputy lieutenants of counties may require the attendance of any surgeon residing near the place of meeting to decide on the appeals of persons claiming to be exempt from compulsory service in the militia by reason of bodily infirmity. Surgeon to make a declaration faithfully to discharge his duty, and to receive for each day's attendance not less than half-a-guinea nor above two guineas, proportioned to the service discharged.

III. VOLUNTEER FORCE OF GREAT BRITAIN.

An act of 1863, the 26 & 27 V. c. 65, consolidates and amends the laws relative to volunteers. By s. 2, power is given to the crown to accept service of persons desirous to form volunteer corps through lieutenants of counties. The crown may constitute a permanent staff, consisting of an adjutant and sergeant instructors, for not exceeding five years; or an adjutant or sergeant instructors only, subject to the officers of corps, according to rank and military usage. Non-commissioned staff enlisting in the militia or the line may be tried as deserters. Officers to be commissioned by lieutenant of county, subject to royal approval. Volunteer officers to rank with the youngest of the same rank of the regular and militia forces. M.P.'s accepting commissions do not vacate their seats. Officers to be sworn by county lieutenant. Any volunteer, except on actual military service, may quit his corps on giving fourteen days' notice in writing to his commanding officer, delivering up, in fair wear-and-tear order, all arms, clothing, and appointments of public property issued to him; paying all money due under the rules of his corps, and thence be struck out of the muster-rolls. An annual inspection to be held by a general or field officer, and requisite efficiency to be declared by an order in council. Crown may disband corps, or service of existing corps already formed may be continued. Two or more corps may be formed into an administrative regiment with permanent staff. Secretary of state to make regulations for government of volunteer force consistent with the act, s 16. In case of invasion, power to the crown to call out volunteers for actual military service. In actual service two guineas, or part thereof, as the commander thinks fit, for necessaries, to be issued to every officer and volunteer belonging to the permanent staff. On release from actual service, one guinea to be paid to every officer and

volunteer present with the corps at the time. Provision for casualties in the service, s. 20. Commanding officer may discharge volunteer for disobedience of order, or neglect of military duty, or other offence under arms, wearing the clothing or accoutrements, or going or returning from drill, s. 21. Permanent staff subject to the Mutiny Act while not on actual service; volunteer corps while on actual service, s. 22. Officers and volunteers may make rules for management of the property, finances, and civil affairs of the corps. Subscriptions and fines recoverable; buying of volunteers arms punishable. Wilful injury to butt or target, penalty £5. Lands may be purchased for exercise, and footpaths diverted by leave of justices, s. 87. Service as volunteer exempts from militia, s. 41; and horse duty, if horse used in service six days in the year, and from tolls going or returning in uniform on duty, s. 45. This act has been amended by 32 & 33 V. c. 81.

Members of benefit societies do not forfeit their interests therein by being enrolled in yeomanry or volunteer corps.

IV. GROUNDS FOR VOLUNTEER RIFLE PRACTICE.

The 26 & 27 V. c. 65, affords facilities for the acquisition by rifle volunteer corps of fit grounds for rifle practice. The act does not extend to Ireland. Any volunteer corps may purchase, take on lease, or otherwise acquire any land for practice, and the erection of butts, and other accommodation, subject to assent of secretary for war. Power given to secretary to give or withhold his assent. Landlords empowered to convey lands to be used as rifle ground. Chief commissioner of works may grant the right of shooting in royal parks, gardens, and possessions, for not exceeding twenty-one years upon the terms he may approve. But such grants always revocable by the crown. Like power of grant of lands for rifle practice given to the duchies of Lancaster and Cornwall, and to corporations lay or ecclesiastical. Power given to stop footpaths crossing lands acquired for rifle practice, with consent of the parish, or upon the certificate of two justices that the footpath to be substituted is convenient to the public. Secretary for war to make by-laws with a view to the safety and convenience of the public in relation to rifle grounds under the act.

The provisions of this act are extended to *volunteer artillery*, so that volunteer corps of artillery may purchase or acquire land under the act of 1860 for artillery practice and the erection of batteries, targets, and other accommodation for the use of the corps. Lands held on trust for any corps to pass and vest in officer in command for time being. Wilful injury to butts or targets subjects to a penalty not exceeding £5.

By the same act (26 & 27 V. c. 65) the volunteer force, same as officers and soldiers of the line, their horses and carriages, are exempt, while on duty and in uniform, from all tolls and dues demandable at any turnpike, pier, wharf, quay, or landing-place. Penalty for demanding toll or dues not exceeding £5. A like penalty for making false representation with intent to obtain exemption.

V. GOVERNMENT OF THE ROYAL NAVY.

The system of government and discipline established in the navy is directed by certain express rules and articles, enacted by the authority of parliament; in these articles almost every possible offence is enumerated, and the punishment annexed, by which means seamen have an advantage over soldiers, whose articles are framed at the pleasure of the crown. The provisions relating to the government of the navy are comprised in the 29 & 30 V. c. 109. By s. 1, public worship to be reverently performed according to the liturgy, with prayers and preaching, and the Lord's-day diligently observed in ships according to law. Misconduct in flag or commanding officer upon signal of battle, if acting traitorously, punishable with death, s. 2. Every other person subject to the act not using his utmost efforts in action, if he has acted traitorously or from cowardice, to suffer death. Spies for the enemy subject to like punishment. Holding improper communication with the enemy, without any traitorous intention, subject to dismissal from the service. Mutiny, if accompanied by acts of violence, subjects to the punishment of death. Civilians, not otherwise subject to the act, endeavouring to seduce from allegiance those who are, to suffer capital or minor punishment. Penalty for profane swearing, drunkenness, uncleanness, or other scandalous immorality, dismissal with disgrace from the service. Penalties by dismissal from the service or otherwise, for taking money or other effects from a prize ship prior to adjudication in an admiralty court, or for stripping or ill-using persons taken on board a prize, and on commanders capturing as prize by collusion or collusively restoring ships or goods. Every person belonging to the royal navy, and borne on the books of a ship in commission, subject to the act. Act not to supersede the authority of the ordinary civil and criminal jurisdiction of the realm.

Commanders-in-chief are empowered to call courts-martial, consisting of commanders and captains. If three or more ships meet on a foreign station, the senior officer may hold courts-martial and preside. No court-martial to consist of more than nine, nor less than five members. And, after trial begun, no member to absent himself except in case of sickness, upon pain of being

cashiered. The judge-advocate and all officers constituting a court to be upon oath.

The power given by the statutes remains in force with respect to ships wrecked, lost, or destroyed, until they be discharged, or the crew removed to another ship, or till a court-martial has been held to investigate the loss of the vessel. If, upon inquiry, it appear every one did his duty, their pay goes on; as, also, the pay of officers and seamen taken by the enemy, having done their best to repel the enemy, and behaved obediently.

By the same act, the following punishments may be inflicted in the navy, namely, death, penal servitude, dismissal from the service, imprisonment or corporal punishment, forfeiture of seniority, dismissal from ship to which offender belongs, reprimand or severe reprimand, disrating a petty officer, forfeiture of pay, &c., with such minor punishments as are now inflicted by custom in the navy. In any case of corporal punishment, no more than forty-eight lashes to be inflicted. No officer to be subject to corporal punishment, nor any petty or non-commissioned officer, except in case of mutiny.

By 16 & 17 V. c. 69, the compulsory service of seamen may extend to ten years, or any other term of continuous service authorized by the regulation. By s. 12, *spirituous* or *fermented liquors* not to be brought on board any queen's ship without the consent of the commanding officer; such spirits or liquors subject to forfeiture; and any person who shall approach or hover about a ship, without previous consent, for the purpose of conveying liquors or spirits on board, or shall aid or advise any officer, seaman, or marine to desert or be absent, is liable to a penalty not £10. By s. 18, railway companies are required to convey naval forces upon the same terms as military and police. (*See* further 29 & 30 V. c. 109.)

By the 19 & 20 V. c. 83, for the better defence of the realm and more ready manning of the navy, the coastguard service is placed under the authority of the admiralty. By s. 7, officers and men employed on the coastguard, and borne on the books of any ship belonging to the royal fleet, are to have the same privileges in respect of making allotment of wages and remittances and of pensions, as persons serving in the fleet. Officers of the coastguard may, as naval officers, instruct and train the royal naval coast volunteers.

VI. NAVAL AGENCY AND DISTRIBUTION ACT.

By 27 & 28 V. c. 24, each of her Majesty's ships of war when in commission to have a ship's agent, to be appointed by its commander, and be registered. Persons in service of crown proctor or attorney, disqualified for such appointment, but a partner

not incorporated qualified, and any change in the firm will not affect the appointment, neither will any change of commanding officer. Duties of agent to act in behalf of ship in case of salvage, breach of any law in respect of merchant shipping, violation of customs, the seizure or capture of slave-ships, and in the distribution of bounty, prize, and other money. Agent to receive 2½ per cent. on amount distributed in full remuneration for his services.

VII. REGULATION OF NAVAL PRIZE OF WAR.

The 27 & 28 V. c. 25, enacts permanently, with amendments, such provisions concerning naval prize as have heretofore been usually passed at the beginning of a war. The high court of Admiralty, and every court comprised under the term "vice-admiralty court," to have jurisdiction and cognizance of, and judicially proceed in, all matters of prize within her Majesty's dominions. An appeal to the Queen in council in case of a final decree, and in other cases, with leave of the court making the decree. Appeal to be within three months after date of the order or decree appealed from. Prohibition against officers of court acting as proctor or agent, or being concerned for adverse parties in a cause. Every ship taken as prize, and without breaking of bulk, to be delivered up to the marshal of the court, and the captors bring the ship's papers into the registry of the court; these provisions, by s. 22, not to apply to ships of war taken as prize. S. 34 refers to jurisdiction of prize court in case of capture in land expeditions by naval and military forces. Any ships or goods taken as prize by a ship other than a ship of war of her Majesty to become, on condemnation, droits of Admiralty, s. 39. Any master of a merchant vessel under convoy disobeying orders, or deserting convoy, to be fined, in the discretion of an Admiralty court, not exceeding £500, and suffer imprisonment not exceeding one year.

VIII. RESERVE VOLUNTEER FORCE OF SEAMEN.

The 22 & 23 V. c. 40, provides for a reserve volunteer force of seamen for service in time of emergency, and that such force be duly entered and trained. By s. 1, power is given to the Admiralty to keep up a number of men not exceeding 30,000, to be called "The Royal Naval Volunteers;" such men to be raised in the United Kingdom and Channel Islands by volunteer entry from among seafaring men and others deemed suitable to the service. Volunteers to be entered for five years subject to the provisions of the act; at the end of the fifth year may claim to be discharged, but not to be actually discharged without consent of the Admiralty. Volunteers may be trained and exercised for twenty-eight days in

each year, either on shore or on board ship, and may be required to join any ship the Admiralty think fit. The whole or part of the force may be called into actual service by proclamation or notice to parliament, if sitting. Volunteers liable to serve three years in the navy, same as the crews of the vessels to which they are appointed, or the three years' service may be extended by proclamation two years, entitling to extra pay of twopence per day; or they may be required to serve at intervals, so as to complete actual service of five years, with extra pay. When called out, volunteers to be victualled in the same manner as seamen of the fleet. Volunteers exempt from the militia and parish offices, and under certain regulations eligible for Greenwich Hospital. Provisions in force relating to billeting of marines to extend to volunteers. Admiralty to make regulations as to sums to be paid to volunteers for entering or re-entering under the act. Admiralty may grant pensions, but pensioners, in case of emergency, to join the navy. Pensioners subject to the laws and customs which govern the fleet. Regulations to be made as to form of entering, clothing, and accoutrements. Penalty on re-enlisting £20, s. 16. Penalties on volunteer enlisting into any other force, or *vice versâ*. Penalty on selling or buying clothes, arms, or accoutrements, ss. 18, 19. Penalty of £20 for not attending training and exercise. Not attending when called into actual service may be punished as desertion from the navy. Penalty on inducing volunteers to absent themselves, or harbouring them.

By 26 & 27 V. c. 69, her Majesty may accept the offers of persons who are or have been masters or mates or engineers in the merchant service to serve as officers in the navy, subject to such rules as the Admiralty may frame. If called out for training or actual service to receive pay, and entitled to allowances if disabled, or if killed their widows to receive pensions.

IX. NAVAL WILLS ACT, AND GREENWICH HOSPITAL.

After commencement of 28 & 29 V. c. 72 (Jan. 1, 1866), wills of seamen or marines made any time previously to their entering into service, of wages, prize, bounty, or other allowance payable by the Admiralty, or in its charge, invalid. Will invalid if combined with power of attorney. For a valid will of money or effects in charge of Admiralty it must be in writing, executed with the forms prescribed by the Wills Act. If will be made on board ship, it must be attested by an officer, or if made elsewhere it must be so attested, or by a justice, incumbent, curate, or minister of worship of the place where the will is executed. Will so made entitled to probate, and person taking it out entitled to administer wages, money, or effects of the testator. S. 6 provides for wills made by seamen if prisoners of war, or made conformable to the act if admitted by the Admiralty.

The 28 & 29 V. c. 111, regulates the disposal of money and effects under the control of the Admiralty belonging to deceased officers, seamen, and marines of the royal navy.

Another act of 1865 (28 & 29 V. c. 89), provides for the better government of Greenwich Hospital, and the more beneficial application of its revenues. Power given by order in council to order new pensions to officers and men and seamen of the merchant service entitled to the benefits of the hospital, so long only as they are not on the establishment or inmates of the hospital, but in addition to any half pay, pension, or allowance. Additional pensions to those who may cease to be inmates. Assignment of pensions or allowance void, s. 8. Offices of commissioners and governors of the hospital abolished on and after Sept. 30, 1865, but entitled to retain their titles with pensions and allowances. Government of the hospital and its schools vested exclusively in the Admiralty, with power to regulate the admission of inmates. Landed property of the hospital vested in the Admiralty, with authority to accept devises, notwithstanding the statute restraining alienation in mortmain or dispositions for charitable uses, s. 43. The remaining sections refer to sale of advowsons, marking of stores, and the auditing of accounts. (See further 32 & 33 V. c. 44.)

X. CONTAGIOUS DISEASE AT NAVAL AND MILITARY STATIONS.

The 29 & 30 V. c. 35, and 32 & 33 V. c. 96, make provision for the prevention of contagious diseases in certain towns which are military stations, viz.:—Aldershot, Canterbury, Chatham, Colchester, Dover, Gravesend, Maidstone, Plymouth, Devonport, Portsmouth, Sheerness, Shorncliffe, Southampton, Winchester, Windsor, Woolwich, The Curragh, Cork, Queenstown. By these two acts, prostitutes in the above-mentioned towns are made liable to certain regulations and to periodical examination by the inspector or assistant inspector, who is to be a medical officer, appointed during pleasure by the Admiralty and secretary of state for war, to be an inspector of certified hospitals under these acts.

XI. DOCKYARD AND NAVAL STATIONS.

The Harbour Regulation Act, 54 G. 3, c. 159, provides for the regulation of the ports, harbours, and navigable rivers of the United Kingdom, for the better security of the royal dockyards, canals, and moorings, and regulates the mooring and placing of private ships and craft in proximity with the same so far as the tide flows or re-flows. The act also restricts *the keeping* of gunpowder on board ships, having *fires, heating pitch,* having shotted guns, or the firing *of guns.*

In 1863, the 26 & 27 V. c. 30, was passed for the purpose of further regulating harbours, dockyards, and naval stations, but it was repealed in 1865, when the Dockyard Ports Regulation Act, 28 & 29 V. c. 125, was passed. By this act the Queen in council is empowered to define the limits of a dockyard port, and also to make regulations relating to the mooring and anchoring of vessels, and to restrictions on dangerous cargo, carrying shotted guns, &c., and also as to the rates of speed of steamers, and as to the presence of at least one person on board every vessel of a specified size and otherwise. The Admiralty also are empowered from time to time, to appoint a fit person to superintend the execution of the act, and to protect the port, to be called the Queen's harbourmaster. The Queen's harbourmaster has power to search vessels suspected of having dangerous goods or shotted guns on board, and may also unmoor vessels moored in an improper place, and may remove wrecks and unserviceable vessels. The act deals also with the penalties for infringing the regulations laid down in the order in council, and the method of raising and applying these penalties.

The Queen is also empowered by statute to assign the limits of all ports, wharfs, and quays, for the exclusive landing and loading of merchandise. The erection of beacons, light-houses, and sea-marks, is also a branch of the royal prerogative. By the 8 Eliz., the corporation of the Trinity House are empowered to set up beacons and sea-marks, wherever they think necessary; and if the owner of the land, or other person, shall destroy or remove them, he forfeits £100. By 46 G. 3, c. 153, no pier, quay, wharf, jetty, breast, or embankment shall be erected in or near to any public harbour, without giving one month's notice to the Admiralty, on pain of £200, to be recovered by action or information.

CHAPTER XXIX.

Protestant Dissenters and Roman Catholics.

FEW traces remain in the statute book of the disqualifying penal code, which, to a recent period, interdicted to a large portion of the community not only the enjoyment of their civil immunities, but the free disposal of their persons and property. No class of religionists is now exclusively subject to any test or disability on account of dissent from the doctrine or discipline of the established church; and the honours and advantages of the social state are open to every candidate, whatever modification of Christian belief he may profess.

By the Toleration Act, 1 W. & M. st. 1, c. 18 (confirmed by 10 Ann, c. 12), all persons dissenting from the Church of England (except Papists and persons denying the Trinity) were allowed to assemble for religious worship according to their own forms on condition of their taking the oaths of allegiance and supremacy. By 19 G. 3, c. 44, it was provided that dissenting preachers or teachers might be entitled to the benefits of the Toleration Act, on subscribing a declaration professing themselves to be Christians and Protestants, and the same statute relieved dissenters in general. This act was followed by 52 G. 3, c. 155, and 53 G. 3, c. 160, by which dissenters were further relieved; and by 18 & 19 V. c. 81, dissenters are now allowed to register their places of worship with a registrar-general of births, deaths, and marriages, instead of the episcopal or other authorities mentioned in the Toleration Act.

Most of the severer penalties and disabilities to which the subjects of this realm who profess the Roman Catholic religion were at one time subject, were removed by 18 G. 3, c. 60, 31 G. 3, c. 32, and 3 G. 4, c. 30, on condition of their taking such oath and declaration as in those acts provided. And by the Catholic Emancipation Act, 10 G. 4, c. 7, Roman Catholics were restored to full enjoyment of all civil rights.

A Catholic priest is not eligible to sit in the House of Commons, and proof of the celebration of any religious service according to the rites of the Church of Rome is evidence of such person being in holy orders within the meaning of the act.

A Roman Catholic may now hold any office except the office of the guardian or regent of the United Kingdom, of lord chancellor, or keeper of the great seal, of lord-lieutenant or other chief governor of Ireland. By 30 & 31 V. c. 75, all the Queen's subjects, without any reference to their religion, are made eligible to hold the office of lord chancellor of Ireland. When such office is held by a person not a member of the established church, the right of presentation to benefices to devolve upon the Queen, or other person by her Majesty's appointment, or in default upon the Archbishop of Armagh.

By s. 4, every person holding any judicial or civil or corporate office may attend and be present at any place of public meeting for religious worship in England, Ireland, or Scotland, in the robe, gown, or other peculiar habit of his office, or with the ensign, or insignia of or belonging to the same, without incurring any forfeiture of office or penalty for such attendance.

By 7 & 8 V. c. 102, and 9 & 10 V. c. 59, almost the whole of the enactments still remaining in force against the Roman Catholics were repealed, and the obligation for them to use the special oath which was provided by the Catholic Emancipation Act, by which they abjured any intention to subvert the church establishment and promised never to exercise any influence so as to destroy or weaken the Protestant religion or government, appears to have been

almost altogether removed. (*See* 29 & 30 V. c. 19, 30 & 31 V. c. 75, and 31 & 32 V. c. 72.)

By the Irish Church Act, 1869 (*see* p. 11,) the union between the churches of England and Ireland as by law established was dissolved, and it was enacted that the Church of Ireland should cease to be established at law, and that, after satisfying as far as possible upon principles of equality as between the several religious denominations in Ireland, all just and equitable claims, the property of the Church of Ireland should be applied in such manner as parliament should afterwards direct. Parliament has not as yet made any direction as to the application of the surplus property of the Church of Ireland.

PART IV.

PROPERTY AND ITS INCIDENTS.

HAVING, in the last Part, stated the various laws which affect persons in public offices, in their professions, trades, and occupations, and in their individual and religious relations to each other, we come next to those which affect their possessions. But before entering on the incidents connected with the possession and conveyance of property, it may be useful to explain the meaning of a few terms, the legal sense of which differs in some degree from that usually intended in common conversation; and also to premise a few explanatory observations on the nature of tenures, and the different modes of acquiring property.

I. EXPLANATIONS.

Property may be defined as anything possessing exchangeable value, and is either *real* or *personal*.

Real property consists of lands, tenements, and of such things as are permanent, fixed, and immovable, and the interest in which continues during the life of the owner, or the life of another person or persons.

Personal property, or personalty, consists of leases, money, goods, and other movables, which either are or easily may be transferable.

Chattels include all property, movable or immovable, which is not freehold, copyhold, or inheritable. They are either real or personal; real chattels, or chattel interests, are interests or minor estates, carved out of greater, as leases for terms of years; personal chattels are all property not connected with the freehold.

Estate, in ordinary discourse, is applied only to land; but, in law, obtains the same signification as property, and may be either *real* or *personal*.

Hereditament comprehends all inheritable property, including not only land and tenements, but whatever may be intrusted or conveyed to another; as rents, advowsons, common right of way, annuities, offices, &c.

Manors are as ancient as the Saxon constitution, and imply a territorial district, with the jurisdiction, rights, and perquisites belonging to it, and on part of which the lord resided, and cultivated as his demesne land for the use of his household: the rest being distributed among his tenants in fee, for life, years, or at will, according to the custom of the manor. They were formerly called *baronies*, as they still are *lordships*; and each lord was empowered to hold a court, called the court-baron, for redressing misdemeanours and settling disputes among the tenants.

Franchise, or *liberty*, for the terms are synonymous, is defined a royal privilege, or branch of the Queen's prerogative, subsisting in the hands of a subject. To be a county palatine is a franchise vested in a number of persons. So it is to have the right of free warren, to hold a court-leet, or even for a number of persons to be incorporated, and maintain perpetual succession, and do other corporate acts; each individual being said to have a franchise or freedom.

Lastly, the reader will frequently meet with words terminating in "*or*" and "*ee*": in all such cases the former obtains an *active* signification, implying the person who does an act: the latter a *passive*, denoting him to whom the act is done. Thus, he that grants a lease is the *lessor*, and he to whom it is granted is the *lessee*; the person who indorses a bill of exchange is styled the *indorser*, and he to whom it is indorsed the *indorsee*.

II. TENURES.

Nearly all the real property of England is supposed to have been granted by, and holden of, some superior lord, in consideration of certain services to be rendered to the lord by the tenant or possessor of the property. Of this nature were tenures by *grand* and *petit sergeantry*, both of which imposed certain services relating to the king's person. By the 12 Car. 2, c. 24, *which abolished* the military tenures, commuting *them for a grant of* excise and customs, only the *honorary services of grand sergeantry* are reserved; such

as carrying the king's sword or banner, or officiating as butler or carver at the coronation.

Tenure in *Burgage* is that by which all tenements in *burgs* or walled towns were formerly held, and which is not entirely lost. This tenure was a rent certain, payable to the king or the lord to whom he had granted it, and differed nothing in effect from socage tenure. The citizens of London held in burgage of the crown, till they had a grant to hold in free burgage or common socage. *Burghs* are the ancient corporate towns, which sent members to parliament, the electors being the occupants of tenements in the borough; and where the right of election was in the burgage tenure, it was a proof of the antiquity of the borough. *Borough* is a term also applied to towns and places enfranchised under the Reform Act of 1832, as Manchester, Birmingham, or Lambeth.

Socage tenure, in its most general signification, denotes a tenure by any certain and determined service, and is that tenure by which most free lands in England are holden. It is derived from *soc*, a ploughshare; and the service having been commuted into a rent, which has been bought off or extinguished, the land held in free or common socage is wholly exonerated, except under the legal fiction by which it is held of the sovereign, as the universal lord of the soil.

Tenure in *Garel-Kind* has several peculiarities: first, that not the eldest son only of the father shall succeed to the inheritance, but all the sons alike; and, secondly, the estate does not escheat to the lord in case the ancestor is attainted, but descends to his heir, the maxim being, "the father to the bough, the son to the plough."

Tenure in *Borough-English*, which still prevails in Stafford and some other ancient boroughs, though its abolition has been recommended by the real property commissioners, is that by which the youngest son inherits from the father. It is called Borough-English, because, as some hold, it first prevailed in England; and the reason of it is said to be, that during the feudal times the lord claimed the privilege of sleeping the first night with the vassal's bride; so that the lands descended to the youngest, from the possible illegitimacy of the eldest child. But this privilege is not known ever to have prevailed in England.

Copyhold tenure is that for which the tenant has nothing to show but a copy of the roll, made by the steward in the lord's court, on being admitted to his tenement. Copyholders were anciently no more than villeins, who, by successive encroachments on their lords, at length established a customary right to their estates, which before were held absolutely at the lord's will. No copyhold land can be made at this day, for the requisites of a copyhold estate are, that it has been demised time out of mind by copy of court-roll; and that the tenement is parcel of or within the manor. In Ireland there are no lands of a copyhold tenure, but in England it is by this tenure that much of the landed property continues to be holden,

under a relaxation of its more onerous ties and conditions. Copyhold land has been made inheritable with other land, and copyholders are eligible to serve on juries, and to the parliamentary franchise; and as the services anciently due from them are mostly fallen into desuetude, a copyhold estate has become nearly equal in value to a freehold. Subsisting manorial rights may be commuted, and copyholds enfranchised under the provisions of 4 & 5 V. c. 35, amended by subsequent statutes. The tenant or lord of the copyhold land may compel its enfranchisement, and the lord or tenant compel the extinguishment of a claim of heriots. When any lord or tenant requires an enfranchisement, notice is to be given, and unless the sum be agreed upon between the parties, the amount is to be ascertained under the direction of the copyhold commissioners. The commissioners are empowered to frame an award of enfranchisement, which award is to have the same validity as a deed of enfranchisement now has under the Copyhold Acts.

Joint-tenancy is the joint ownership of two or more persons in land, or other property, as goods and chattels. *Common tenancy*, or tenants in common, are those who have lands or tenements in fee-simple, fee-tail, or for life, and have such by several titles, and not a joint title. There may be tenants in common other than land, as a chattel, for instance, such as an animal, or any inanimate movable. *Coparcenerships* are so called because the lands of which they are parceners may be partitioned or divided among them. There may be parceners by common law and by custom.

A *freehold estate* is any estate of inheritance, or for life, in either a corporeal or incorporeal hereditament, existing in, or arising from, real property of free tenure; that is, now, of all property which is not copyhold.

A tenant in *fee-simple* is one who has the absolute, unconditional, and freehold possession of a property to himself and his heirs for ever; he can dispose of his estate at his own pleasure by will or deed. It is the largest interest that can be held in real property, and is contradistinguished from a tenure in *fee-tail*, which is a limited inheritance. To create it, words of inheritance are necessary; that is, the conveyance must be to the grantee *and his heirs*, unless in case of wills, where equivalent expressions are admitted.

III. CONVEYANCE OF PROPERTY.

The methods of acquiring real property are limited, by the laws of England, to two—*descent* and *purchase*.

Descent, or hereditary succession, is the title whereby the land or tenements devolve upon a man from his ancestors by act of law as heir. The *heir-at-law*, therefore, is he to whom the law assigns the estate immediately on the death of the ancestor; and an estate so descending to the heir is called an *inheritance*.

Descent at common law is *lineal* or *collateral*: *lineal* descent is from the father to the son, from the son to the grandson, and so forward; *collateral* descent is a side branch from the same stem, as from an uncle or a nephew.

Until the death of the ancestor, the person next in the line of succession is called either the *heir apparent* or the *heir presumptive*. The *heir apparent* is one whose right of inheritance is indefeasible, provided he outlive the ancestor; as the eldest son, or his issue. The *heir presumptive* is one who, if the ancestor die immediately, would, in the present state of things, be his heir, but whose right of inheritance may be defeated by some nearer heir being born: thus the presumptive succession of a brother or nephew may be destroyed by the birth of a child; or that of a daughter by the birth of a son.

Purchase, the other mode of acquiring real property, is a term of wide signification in law, and is used in contradistinction to descent. If an estate come to a man from his ancestor without writing, that is a descent; but when a person takes anything from an ancestor by will, gift, or deed, in which the expressed agreement of the party is essential, and not as heir-at-law, that is a purchase.

In the act of 1833, for amending the law of inheritance, the word "purchaser" is declared to mean the person who last acquired the land otherwise than by descent, partition, escheat, or inclosure, by effect of which the land becomes descendible in the same manner as if acquired by descent; and "descent" is declared to mean the title to inherit land by reason of consanguinity. The word "land" in the act extends to manors, advowsons, messuages, and to chattels, and other personal property, transmissible to heirs, and inheritable, 3 & 4 W. 4, c. 106, s. 1.

IV. TRANSFER OF LAND BY REGISTRATION OF TITLE.

An important act of 1862, the 25 & 26 V. c. 53, is intended to give certainty to the title to real estates, to facilitate the proof thereof, and to render dealings with land more simple and economical. By s. 1, a registry of titles to landed estates is to be established, to be confined to estates of freehold tenure and leasehold estates in freehold. Applicants to register to be the owner, trustee, or purchaser of the fee-simple, or any person authorized by the court of Chancery. Application may be made though the estate is subject to charges and incumbrances. Application for the registration of a title as indefeasible to undergo examination, and no title to be accepted as indefeasible unless it appear to be such as a court of equity would hold to be a valid marketable title. An exact description and identity of lands to be given, &c. Three months' notice by public advertisement of the intention to

register. If no adverse cause be shown, the registry to be made and number affixed, referring to the book entitled the "Record of Title to Lands on the Registry." In another book, under the same number, entitled the "Registry of Mortgages," is entered an account of all charges and incumbrances affecting the whole or any part of the estate of any person named in the Record of Titles. Books may be inspected by persons interested therein, or their agents. Any question on the construction of a deed may be referred by the registrar to a judge of the court of Chancery. Before final registration, applicant and solicitor to make oath that all deeds, wills, and writings relating to title have been made known to the registrar, who may demand security for costs before proceeding.

By s. 25, application for registration without guarantee of an indefeasible title may be, under certain conditions, as the receipt previously of the rent or profits for ten years. Leasehold estates may be registered in like manner as freehold lands, if demised for terms of years of which fifty are unexpired, or for lives of which two at least are still subsisting.

Ss. 27-40 comprise general provisions as to notices, and caveats against title and liabilities. Taxes, tithes, rents payable to the crown, public rights of way, or leases not exceeding twenty-one years, not deemed charges or incumbrances within the act.

Ss. 41-62 refer to the simplification of title by judicial sales, made by the court of Chancery on petition or otherwise, as general orders may direct.

By s. 63, all registered land, or part thereof, may be conveyed, dealt with, or affected in or by any of the following dispositions: namely, by a statutory disposition in a form prescribed; by endowment on the land certificate; by deposit of the land certificate; by any deed, will, judgment, or instrument by which land, if not registered, may now by law be conveyed, dealt with, or affected. But no equitable mortgage or lien on registered land can be created by a deposit of title-deeds.

By s. 68, registrar upon request to deliver to the owner of an estate, or of any interest in land, a certificate, comprising a description thereof, of incumbrances, charges, and liens, whether or not registered as indefeasible title, with all other particulars, for the purpose of manifesting the exact nature of the owner's estate or interest. Registered proprietors, desirous of selling, may obtain special land certificates. Lands may be conveyed by endorsement of certificate in a prescribed form. For creating a lien, deposit of estate certificate as effective as deposit of title-deeds, s. 72. Registered land transferable by will or deed, same as land not registered. On a conveyance, deed or a copy to be sent to registrar. Where registered estate is transmitted by descent to a person, such person to be registered. On application for registry of a will, notice may be required by the registrar to be given to

the heir-at-law. In case of bankruptcy of registered proprietors assignees to be registered.

Ss. 89-95, general provisions to facilitate registration, and to protect registered proprietors against the transfer or charging of land. Any person interested under an agreement, or otherwise, in land may lodge a caveat with the registrar, that no disposition of such land be made until notice has been served upon the cautioner. Caution to be supported by affidavit.

By s. 105, if any person to obtain a registration of land, or to obtain a land certificate, make a false statement, he is guilty of a misdemeanour, and on conviction liable to imprisonment for any term not exceeding three years, with or without hard labour, or to a fine, at the discretion of convicting court.

By s. 108, an Office of Land Registry to be established, conducted by a registrar, assistants, examiners of title, and messengers. The registrar to be appointed by the crown, assistant registrars, &c., by lord chancellor.

Any proceedings by a married woman under the act must be with the concurrence of the husband, s. 115. The act is limited to England, and has not hitherto been much used.

Collateral with the foregoing act is the 25 & 26 V. c. 67, for obtaining a *declaration of title*. It being expedient to enable persons having interest in land to obtain in certain cases a judicial declaration of their title, so as to enable them to make an indefeasible title to persons claiming under them as purchasers for a valuable consideration, it is enacted that parties entitled to land in fee-simple, either absolutely or subject to incumbrances or interest, vested or contingent, or entitled to apply for registration of an indefeasible title, may petition the court of Chancery in summary way for a declaration of title under this act. Petition to set forth particulars as to incumbrances or interests affecting title, s. 2. Two persons interested may jointly petition. No petition admissible as to copyhold land, or customary tenure. When investigation is satisfactory, court may order a declaration of title to be made in not less than three months from date of order. Petitioners to file affidavit that all documents have been produced. Any application by a married woman under the act must be with the husband's concurrence, s. 36. Appeal allowed and petition against declaration. Certificate to be given to party obtaining a final declaration. Declaration not to affect certain liabilities, as taxes, leases, or agreements, s. 29.

Both the preceding acts are limited to England.

By an act of 1864, the 27 & 28 V. c. 112, judgments are not to affect land until the land is delivered in execution.

V. PROPERTY OF MARRIED WOMEN.

Property securely settled upon a wife is protected against th

creditors of the husband, because in the will or deed vesting it in her the income is directed to be paid to her for her own use, independent of the debts or control of her husband; and her receipt alone is declared to be the only sufficient acknowledgment of the same. She has also a power to dispose of the principal by will; but a husband cannot settle property on a wife to the exclusion of the just claims of his creditors. If he wishes to secure a provision for his wife in case of his death or bankruptcy, he must at the time of making the settlement (unless it be made before and in consideration of marriage) be free from debt, no matter whether the property so settled be his own or came to his wife through deed or will. All absolute legacies falling due to a married woman become the property of her husband; hence the necessity for limitations, so as to prevent the husband's touching the income until it has fallen into his wife's possession.

In respect of the *reversionary interests of married women*, an act of 1857, the 20 & 21 V. c. 57, provides that a married woman may, by deed, dispose of every future or reversionary interest, whether vested or contingent, of such married woman, or her husband in her right, in any personal estate whatsoever to which she shall be entitled under any instrument made after the said date (except such a settlement as after mentioned), and also release powers as fully and effectually as she could do if she were a *feme sole*, and also release her right to a settlement out of any personal estate to which she, or her husband in her right, may be entitled in possession under any such instrument, save that no such disposition or release is valid unless the husband concur in the deed by which the same shall be effected, nor unless the deed be acknowledged by her as directed by 3 & 4 W. 4, c. 74, or in Ireland by 4 & 5 W. 4, c 92; but not to extend to any reversionary interest to which she becomes entitled by virtue of any deed by which she is restrained from alienating or affecting the same. Powers of disposition given by this act not to interfere with any other power. Nor to extend to settlements of married women upon marriage, ss. 3, 4.

At the close of the session 1870, an act became law bearing very essentially on the rights and interests of women. Subsequently to this act, the 33 & 34 V. c. 93, the wages and earnings of any married woman acquired or gained by her in any employment or trade in which she is engaged, or which she carries on separately from her husband, and also any money or property so acquired by her through the exercise of any literary, artistic, or scientific skill, and all investments of such wages, earnings, money, or property, shall be deemed and taken to be property held and settled to her separate use, independent of any husband to whom she may be married, and her receipts alone shall be a good discharge for such wages, earnings, money, and property.

By s. 2, deposits in a savings bank by a married woman are

deemed to be in like manner her separate property. Similar security, by s. 3, is given to a married woman's investments in the public funds, not being less than twenty pounds. Like security is given, by s. 4, to the investment in an incorporated or joint-stock company by a woman married, or about to be married; application having been made in writing to the managers or directors. Similar securities to a woman married, or about to be, for investments, on application in writing to the committee of management of any industrial and provident society, or benefit, building, or loan society, duly registered under the acts relating to such societies. But if investments have been made with the money of the husband, any right, transfer, or disposition of them can only be made with his consent. By s. 6, all deposits of money in fraud of creditors are invalid. By s. 7, personal property coming to any woman married after the 9th of August, 1870, as next of kin of an intestate, or under any will or deed if it does not exceed £200, is to belong to her for her separate use. By s. 13, a married woman with separate property liable to the parish for the maintenance of her husband, if destitute. Husband not liable for the debts of his wife, if contracted before their marriage. Married woman having separate property is liable to the parish for the maintenance of her children.

These preliminary and explanatory sections may suffice before entering on the subjects of the following chapters which relate to tithe, commons, and other incidents in the possession of property, and the mode in which property may be acquired by will and testament, by mortgage, bankruptcy, insolvency, contract deed, award, bill of exchange, &c.

CHAPTER I.

Tithes.

TITHES are defined, by Sir William Blackstone, to be a tenth part of the increase yearly arising and renewing from the profits of lands, the stock upon lands, and the personal industry of the inhabitants: the first species being usually called *predial*, as of corn, grass, wood, and fruit; the second, *mixed*, as of wool, milk, lambs, pigs, &c., and of these the tenth must be paid in gross; the third, *personal*, as of trade, occupations, fisheries, and the like, of which only a tenth part of the clear gain and profit is due. The great tithes, as of corn and hay, are generally payable to the rector or parson: the small tithes to the vicar. The successful application of the Commutation Act, by which

many causes of dispute and litigation have been removed, renders less necessary a detailed exposition of the law on the subject of tithes.

In general, tithes are payable on everything that yields an annual increase, but not for anything that is of the substance of the earth, or is not of annual increase, as of mines, minerals, and the like; nor for creatures of a wild nature, as deer and hawks, whose increase, so as to profit the owner, is not annual, but casual.

Tithe is payable for the pasturing of cattle. Gardens, orchards, and nursery-grounds yield a tithe of their produce, if sold in the way of trade; but hot-house fruit, it seems, is not titheable. Timber wood yields no tithe, except when cut down and sold as firewood, or made into charcoal. Fish taken in the sea, or open river, are not titheable; but taken in a pond or enclosed water, they are liable. Pigeons, honey, and bees'-wax are titheable. So may deer and rabbits, though wild by nature, be titheable by special custom. But chickens are not titheable, if tithe has been paid for the eggs.

The tithe of milk is the tenth *meal*; that is, the milk yielded every tenth day.

Barren ground, which has never paid tithe, becomes liable if converted into pasture or meadow land, after the lapse of seven years from the first attempt to make it productive. Headlands being only large enough to turn the plough upon, do not pay tithes unless grain be grown upon them.

Mills for grinding corn are liable for the tenth of their profits, if built since the year 1315. Ancient mills not liable to tithes, will become liable if the power of the mill is increased, and then tithe is payable for such increased power.

The tithe of all extra-parochial lands belongs to the Queen, in right of her prerogative, *Attorney-General* v. *Lord Eardley*, 8 Price, 39.

II. PERSONS NOT LIABLE TO TITHES.

Day labourers and servants in husbandry are not liable to personal tithes. The Queen, by her prerogative, is discharged from all tithes. Nor is a vicar liable for tithes to his rector, nor a rector to his vicar. Persons holding the lands of any abbey, dissolved by the 31 H. 8, c. 13, are free and discharged of tithe in as ample a manner as the abbeys themselves formerly held them. It is from this provision that lands, which were formerly abbey-lands, now claim to be tithe-free. But this exemption does not extend to land belonging to the *lesser monasteries*; that is, of monasteries whose landed income did not exceed £200 per annum, and which were dissolved by the 27 H. 8, c. 28.

Lands may be exempt from tithe, first, by *composition*; and, secondly, by *custom*, or *prescription*.

A *composition* is when an agreement is made between the owner of the land and the parson or vicar, with consent of the ordinary and his patron, that such land shall, for the future, be discharged from the payment of tithe, by reason of land, money, or other equivalent given to the parson in lieu thereof; but the 13 Eliz. c. 10, limits the exchange by restraining all parsons and vicars from making any conveyance of the estate of their churches for a longer period than three lives, or twenty-one years; so that no composition for tithe is good for a longer period than twenty-one years, though made with the consent of the ordinary and patron; nor is it binding on the succeeding incumbent, though confirmed by a court in chancery.

A discharge by *custom* or *prescription* is when, time immemorial, certain persons or lands have been either *partially* or *totally* discharged from the payment of tithe. In the first case, a *modus* or compensation is substituted in lieu of tithe, at two pence an acre for the tithe of land; or an equivalent in work and labour, so that the parson shall have the twelfth cock of hay in lieu of the tenth, in consideration of the owner making it for him; or, instead of crude and unripe tithe, the parson shall have a less quantity, in greater maturity, as a couple of fowls in lieu of tithe eggs.

When land is *totally* exonerated from tithe, it must arise either from being anciently abbey-land, the property of the crown, or some other cause already specified.

For a modus or equivalent to be good, it must be certain and invariable; it must be beneficial to the parson; it must be permanent and durable; it must be a fair and equitable composition; and until recently it must have existed *time out of mind*: that is, as before explained (p. 2), from the year 1189; so that a modus for anything introduced into this country subsequently to that year, as hops and turkeys, would be invalid; and clergymen have sometimes availed themselves of the difficulty of proving an uninterrupted usage for so long a period, to *resume* their tithes, though no reasonable doubt existed that a modus had been originally established.

But the hardship of the law in respect to moduses is abated by 3 W. 4, c. 100, amended by 5 W. 4, c. 83, which renders void any exemption from tithe due to any but a *corporation sole*, unless proof thereof for thirty years, unless payment of tithe is shown to have taken place prior to such thirty years, or that such exemption was made by agreement; and if such proof extend to sixty years, it is deemed absolute and indefeasible, unless paid by agreement; in case of a *corporation sole*, the exemption must have taken place during two incumbencies, and for not less than three years during the commencement of a third; but such

emption must be at least sixty years, and three years, unless by agreement.

Besides tithe, various other ecclesiastical dues are usually considered part of the revenues of the church ; as *oblations, Easter-offerings, mortuaries, and surplice fees.* These are all either voluntary payments, or due by custom, upon particular festivals and seasons ; or upon marriages, deaths, baptisms, and churching of women.

Oblations are certain customary offerings, payable on the death of individuals. *Easter-offerings* are payable from every person in the parish, of sixteen years of age and upwards, by the master or mistress of the family, after the rate of twopence per head.

Surplice fees are payable for every marriage, whether by banns or license ; for every funeral, churching, or christening, according to the custom of the parish.

Mortuaries are claimed on the death of each person in the parish ; if a person, after his debts are paid, leave chattels to the value of £6 and under £30, the mortuary is 3*s.* 4*d.* ; if the value of £30 and under £40, 6*s.* 8*d.* ; if the value of £40, 10*s.* Beneficed clergymen are exempt from the payment of mortuaries except to the bishop of the diocese where they hold their benefice and reside.

III. MODE OF RECOVERING TITHES AND DUES.

The ecclesiastical courts have no jurisdiction to try the *right* of tithes, unless between spiritual persons ; in ordinary cases, between spiritual men and laymen, they can only compel the payment of them when the right is not disputed. So, in disputes about tithes, if the defendant plead any custom, modus, or composition, or other matter in which the right of tithing is involved, this takes the question out of ecclesiastical jurisdiction ; for the law does not allow the existence of such a right to be decided by the sentence of a spiritual judge, who may be interested therein, without the verdict of a jury.

By 2 & 3 E. 6, c. 13, if any person carry off the *great tithe* of corn, hay, and the like, before the tenth part is duly set forth, or agreement made with the proprietor ; or if he hinder the proprietor, or his deputy, from viewing and carrying away his tithe, such offender shall pay double the value of the tithe, to be recovered, with costs, in an ecclesiastical court. By a preceding clause in the same statute, treble the value of the tithe so subtracted or withheld may be sued for in a temporal court.

A more summary method is provided by 7 & 8 W. 3, c. 6. for the recovery of *small tithes* under the value of 40*s.* ; which enacts that, when a person refuses to pay them twenty days after demand, the clergyman may complain, in writing, to two justices of the peace, who, after summoning the party, are to

hear and determine the complaint, and give a reasonable allowance for the tithe, and costs not exceeding 20*s*. Persons claiming an exemption may give security to pay costs, and try the question. When any Quaker shall refuse to pay or compound for his tithes, two justices of the peace may summon him before them, and ascertain what is due from such Quaker, and direct the payment, so that the sum ordered does not exceed £50; and upon refusal, levy the money. A like remedy is extended to *oblations* and *compositions* of the value of £10. 7 & 8 W. 3, c. 34; 53 G. 3, c. 127; 54 G. 3, c. 68.

In suits for the recovery of *church-rates*, it is provided by 3 & 4 V. c. 93, that the judicial committee of the privy council, or a judge of an ecclesiastical court, may order the liberation of any party imprisoned under a writ *de contumace capiendo;* but no such order to be made without the consent of the other party to the suit, except that, in cases of subtraction of church-rate for an amount not exceeding £5, where the party in contempt has suffered imprisonment for six months and upwards, the consent of the other party to the suit is not necessary, so soon as the costs incurred by reason of the custody and contempt of such party shall have been discharged, and the sum for which he may have been cited into the ecclesiastical court shall have been paid into the registry of the court, there to abide the result of the suit; and the party so discharged is released from all further observance of justice in the suit. But compulsory church-rates are now for the most part abolished.

The situation of the London clergy is different from that of the clergy in other parts of the kingdom. In the reign of Hen. 8, continual altercations took place between the citizens and the clergy relative to tithes and ecclesiastical dues. To put an end to these disputes, the 37 H. 8, c. 12, established a commission, at the head of which was the archbishop, with full power to give to their decrees the force of law, *if they were enrolled* in the court of Chancery before the 1st of March, 1545. By a decree of this commission, the tithe of houses and buildings is directed to be paid quarterly, after the rate of 2*s*. 9*d*. for every 20*s*. yearly rent, and 2*d*. for each of the family, for the four yearly offerings.

By the 22 & 23 C. 2, c. 15, the tithes of all the parishes injured in the Great Fire in 1666, are valued at certain yearly sums, to be levied by an equal rate, quarterly: and on non-payment, the lord mayor is to grant a warrant of distress for the same; or, on his refusal, the lord chancellor, or two barons of the Exchequer, may grant such warrant. By 44 G. 3, c. 89, the annual composition for tithes in the parishes damaged by the fire is augmented and settled at certain fixed sums, from £200 to between £300 and £400 per annum. These tithes are a rent-charge on the houses, payable even if empty, and leviable on the goods of the succeeding occupiers.

From this it seems the established clergy of London are divided into two classes. *First*, the clergy of the fifty-one parishes damaged by the Great Fire have a fixed annual stipend, leviable by an equal pound-rate on the parishioners, and the amount of which stipend and the mode of assessment of which are regulated by the 44 G. 3, c. 89. *Secondly*, the rest of the clergy claim 2*s.* 9*d.* in the pound on the rental, under the authority of a decree made pursuant to the 37 H. 8, c. 12, and the validity of which, after much litigation, has been established, *Macdougal ap Purnes res, D. & C.* 135.

IV. COMMUTATION OF TITHES.

The 6 & 7 W. 4, c. 71, amended by subsequent statutes, provides for the conversion of all the uncommuted tithes in England and Wales into a corn rent-charge, payable in money, according to the value of a fixed quantity of corn, as ascertained from year to year by the average price of corn for the seven years ending at the preceding Christmas. A similar system, as applicable to rent, has long prevailed in Scotland, and its great advantage is, that it fixes the tithe at one invariable amount *in grain*, to be paid for in money at the average price. The commissioners are appointed, two by a secretary of state and one by the Archbishop of Canterbury, removable at their joint pleasure. They sit at a board in London, and superintend the execution of the act. Duration of the commission limited to five years, and the end of the then next session of parliament.

For effecting a commutation, two methods are provided :—1. By parochial agreement, voluntary on the part of a majority of persons having two-thirds interest in the land and tithes, but binding on the minority, if unappealed against, or no sufficient cause of objection shown. 2. By *compulsory* awards, which must be regulated and effected under the central board of commissioners. Parochial agreements, to be binding, must be confirmed by the commissioners, and compulsory awards are made by them ; but the latter power, except in the case of a compulsory apportionment, after a voluntary agreement, did not come into effect till the 1st of October, 1838, previous to which time a large portion of the tithes of the kingdom had been successfully commuted by parochial agreements.

The rule given by Mr. White for effecting a conversion of tithe is as follows :—1. Find the gross average money value of the tithe of a parish or district for seven years, ending Christmas, 1835. 2. Apportion the amount of that value upon the lands of the several tithe-payers. 3. Ascertain how much corn could be purchased with such amount ; one-third of it to be laid out in wheat, one-third in barley, and one-third in oats, at the average price

ascertained by the weekly official returns of the price of corn, for the seven years preceding Christmas, 1836. 4. And lastly, in every *future year*, make payable the price of the same quantity of wheat, barley, and oats, at their average prices, founded on a like calculation of the official returns for the seven years ending at each preceding Christmas.

The tithe of *hop grounds* and market gardens is to be divided into two parts, ordinary and extraordinary; and the lands which go out of cultivation are to be relieved from the extraordinary charge, which is to be imposed on such as are newly cultivated. The tithe of land converted from *barren heath*, and which shall have been exempted on that account, during any part of the seven years from tithe, or which (under peculiar circumstances of occupation) may have been entitled to exemptions, such as glebe and the like, is, upon notice, to be estimated according to the average of lands of the like description in the neighbourhood. *Modusses* are to be taken at their actual amount, the only change being that they will be called rent-charges instead of modusses, and will vary henceforth with the price of corn. The rent-charges are made liable to the same parochial rates and incumbrances as the tithes for which they are commuted. Commissioners have a discretionary power on appeal, in cases of *compulsory* awards, to increase or diminish the average value calculated for a commutation to the extent of one-fifth.

By 2 & 3 V. c. 62, before the confirmation of any appointment after a compulsory award, the land-owners and tithe-owners empowered to make a parochial agreement may enter into a parochial agreement for the commutation of Easter offerings, mortuaries, surplice fees, or the tithe of fish or fishing, or mineral tithes.

The 9 & 10 V. c. 73, empowers landowners to redeem the rent-charge agreed or awarded to be paid in lieu of the tithes of a parish, provided the rent-charge has not been apportioned, nor exceeds in amount £15. Separate rent-charge of any land-owner not exceeding 20*s.* in amount may be redeemed after apportionment. Considerations for redemption of rent-charges made payable to the governors of Queen Anne's bounty, to be applied in augmentation of benefices. By s. 16, commissioners are empowered to declare that lands concerning which doubts have arisen after agreement or award of the rent-charge, but before apportionment in respect of tithe exemption, by modus, customary payment, or otherwise, such lands shall be considered a separate district for commutation, and the residue of the parish remain subject to the original award.

Among the most beneficial results of the Commutation Act may be reckoned the diminution of law-suits it has occasioned. The various modes of recovering tithes in the spiritual and civil courts, and before justices of the peace, which originated such unseemly disputes between the clergy and their parishioners, have been ex-

tinguished by the commutation of them. The mode of recovering the rent-charge, if in arrear, is by distraining for it upon the tenant or occupier, in the same manner as a landlord recovers his rent; and if the rent-charge shall have been forty days in arrear, possession of the land may be given to the owner of the rent-charge until the arrears and costs have been satisfied.

The acts for the commutation of tithes are extended by 23 & 24 V. c. 93. By this act corn-rents under local acts may be converted into rent-charges, which rent-charges are to be apportioned by the commissioners with power to appeal to a court of law. Tithes commuted for a sum or rate per head of cattle may be converted into a rent-charge. When a sum or rate per head is in arrear, the arrears are recoverable by distress, or impounding of cattle or other stock. Commissioners to have access to books of comptroller of corn returns, and to be furnished by him with such information as they may require for any award of rent-charge by them in lieu of corn-rents.

V. ANNEXATION OF TITHES TO DISTRICT CHURCHES.

An act of 1865, the 28 V. c. 42, amends the 1 & 2 W. 4, c. 45, by which a rector or vicar by deed may annex a part of the tithes or other annual revenues of his living to any district church or chapel of ease erected or to be erected within the limits of his benefice. By s. 3, such sale or annexation of tithes or revenue only to be made in consideration of a sufficient compensation being made to the rector or vicar; and no agreement for the conveyance to be valid without the consent of the archbishop or bishop, and patron, with the approval of the ecclesiastical commissioners. By s. 8, agreement for transfer to be carried into effect by order of her Majesty in council ratifying such agreement.

CHAPTER II.

Commons.

RIGHT of common is a privilege, by which a person claims to *use* what another man's lands, woods, or waters produce, without having an absolute property therein. It is one of those properties legally termed incorporeal hereditaments, which presumedly commence by some agreement between lord and tenant, and which through time have grown into a presumptive right.

Common of *pasture* is the right of feeding one's cattle on another's land. Commonable beasts are horses, oxen, kine, and

sheep: not commonable are goats, hogs, and geese. Common of *piscary* is a liberty of fishing in another man's waters; as common of *turbary* is a liberty of digging turf upon another man's ground. Common of *estovers* is a right of taking necessary wood from another's estate for household use, and the making of implements of industry. There is also common for digging coal, stone, minerals, and the like: but the most general common right is that of pasture, and it is to that we shall limit our observations.

The *property* of the soil of the common is entirely in the lord, and the *use* of it jointly in him and the commoners: and the respective rights of the lord and commoner are ascertained by statute and usage.

In land subject to common right, the right of the lord of the soil ought to be so exercised as not to injure the right of the commoner to the surface. But the right of the commoner may be subservient to the right of the lord; so that the lord may dig clay-pits there without leaving sufficient herbage for the commoner, if it can be proved such a right has been constantly exercised. He may also inclose that part of the waste, whereby it ceases being common, provided he leave sufficient waste for the commoner. But when the tenants of the manor have a right to dig gravel or take estovers, the lord has no right to inclose and improve the waste of the manor.

A commoner has only a special and limited interest in the soil, yet he has remedies commensurate to his right. If a tenant inclose or build on the waste, every commoner may have an action for the damage. Where turf is taken away from the common, the lord only is to bring the action. A right of common is presumptively established by thirty years' use, and the right becomes absolute and indefeasible after sixty years' enjoyment.

By 13 G. 3, c. 81, in every parish where there are common fields, all the arable lands shall be cultivated by the occupiers, under such rules as three-fourths of them in number and value shall agree to; the expense to be borne proportionately. Persons having right of common, but not having lands in such fields, and persons having sheep-walks, may compound for such right by written agreement, or may have parts allotted to them in common. Lords of manors, with the consent of three-fourths of the commoners, may lease, for not more than four years, any part of the waste, not exceeding one-twelfth part; and the clear rents reserved for the same shall be employed in improving the residue of such waste.

By 4 & 5 W. 4, c. 30, the proprietor of any land in common field may exchange it for any other land, whether lying in the same or another common field, or for any inclosed land lying in the same or an adjoining parish. For the exchange of land held in right of the church, the consent of the patron and bishop is necessary. By 6 & 7 W. 4, c. 115, provides for the inclosure of open and common arable, meadow, and pasture lands, lying intermixed and dispersed

in parishes and townships, with the consent of two-thirds in number and value of the parties interested.

The 8 & 9 V. c. 118, is a general act, comprising 169 clauses, whose objects are described to be to facilitate the inclosure and improvement of commons and other lands now subject to rights of property which obstruct cultivation and the productive employment of labour, and to promote such exchanges of lands, and such divisions of lands intermixed or divided into inconvenient parcels, as may be beneficial to the respective owners; to provide remedies for the defective or incomplete execution, and for the non-execution of powers created by general and local acts of inclosure, and to authorize the revival of such powers in certain cases. The eleventh clause restricts the powers of the act to commons, and stinted pastures in which no part of the property of the soil is in the owners of such cattle-gates or stints, whether divided by metes or bounds or not; and it does not extend to wastes of manors in which the common right is indefinite; nor to the Forest of Dean and the New Forest; nor to within certain distances of large towns, the greatest distance being four miles, except the city of London, for which the distance is fifteen miles; while town or village greens are protected, but power is given to level and preserve the surface and to form boundaries. Commissioners to be appointed for the execution of the act, with secretary, &c. A proportional quantity of the land to be appropriated, according to population, for purposes of *recreation and amusement*, and for allotments to the labouring poor. Encroachments of more than twenty years' standing to be considered as valid, but not else, and school-houses are not to be deemed encroachments; a right given on proof of sixty years' usage; power is also given for the valuer to lay out water-courses, and to make and alter roads and ways. Land allotted for exercise or recreation to be vested in the churchwardens, who may let or sell the grass or herbage, the rents to be applied to the preservation and support of such land in good order, and it is also to be subjected to a rent-charge, which is to be divided among those having an interest in the same; or the person may take the same as a part or the whole of his allotment, in which case he must maintain the fences, surface, &c., and suffer it to be used, the herbage only belonging to him. The allotments to the poor are subjected to a corn rent-charge, to be recoverable as tithe rent-charges; and these rent-charges are to be allotted to the persons possessing the legal interest. Sec. 108 appoints allotment wardens, for the management of the poor allotments, who are to let them as gardens, in quantities not exceeding a quarter of an acre, at rents to be fixed every ten years by the valuer, but free of all tithes and taxes whatsoever, which are to be paid by the wardens; and no dwelling is in any case to be suffered to be erected, or if erected is to be pulled down. If the rent is in arrear for forty days, possession may be resumed, as also if the occupier removes to a distance of more than

a mile from the parish. The rents are to be applied to the payment of tithes, taxes, rent-charges, &c.; and the residue, if any, to go in aid of the poor rates.

With reference to allotments, the 9 & 10 V. c. 70, enacts that where any allotment for *exercise or recreation*, or for any other public purpose, shall have been made the condition of any provisional or supplemental provision, the commissioners may, at any time before the award has made his award, allot an equal quantity of land in lieu of that allotted by the previous order; and by s. 5, they may award rent-charges on the allotments to the lord of the manor, in lieu of any allotment of land to which he may be entitled. By s. 9, also copyhold and customary lands, though not subject to inclosure, may be exchanged under this act; as may also shares of land and name-gates and stints.

Allotments under inclosure acts are freehold, unless otherwise directed by the Act of Inclosure. The 11 & 12 V. c. 99, allows the commissioners, in the case of an allotment of less value than five pounds, to compensate the person entitled thereto, with his consent, by a payment in money.

Commons must be driven yearly at Michaelmas, or within fifteen days after.

In 1857, the Metropolitan Commons Act (29 & 30 V. c. 122) was passed. The authority of commissioners to enclose is excluded, and under the act a memorial for a scheme as to the management and improvement of a metropolitan common may be presented to the commissioners by the lord of the manor or by any commoners, and the commissioners are to direct an examination and inquiry into the memorial. The commissioners are to receive objections to the memorial for two months after the publication of the draft scheme; and they can, after the expiration of the two months, order an inquiry before an assistant-commissioner, by public sitting. The assistant-commissioner is to report on the draft scheme, and, after the report, the commissioners may proceed to consider any objection, and can finally settle and approve of the scheme. The act further deals with the form of the scheme and the statements to be made in it. The commissioners must make a report in the month of February, in every year, of all their proceedings during the last year to the Queen, which report must be laid within fourteen days before both Houses of Parliament.

CHAPTER III.

Mortgage.

MORTGAGE is a pledge of land, tenement, or anything immoveable bound for money borrowed, to be the lender's if the money be

repaid at the time stipulated: the borrower in these bargains is called the *mortgagor*, and the lender the *mortgagee*.

The perpetual alienation of real property was interdicted by the Mosaic law, which provided that no estate could be sold, or any way conveyed to another, for a longer period than the next jubilee, which occurred every fifty years; when, if not previously redeemed, it reverted, free of incumbrance, to the original owner and his heirs.

Although, by law, a mortgage is forfeited on non-payment of the sum borrowed at the time agreed on, yet a court of equity will interfere to prevent the sale: and if the value of the mortgage is greater than the sum advanced, it will allow the mortgagor, within a reasonable time, to redeem his estate, paying to the mortgagee his principal, interest, and expenses: without this, an estate worth £500 might be forfeited for the non-payment of £50. The advantage thus allowed to the mortgagor is called the *equity of redemption*. But, on the other hand, the mortgagee may either compel the sale of the estate, in order to get the whole of his money immediately, or else call upon the mortgagor to redeem his estate; or, in default, to be for ever foreclosed, and thus lose his equity of redemption.

But by the act of 1852, the 15 & 16 V. c. 86, s. 48, the court of Chancery is empowered to direct a sale of mortgaged property instead of a foreclosure, on such terms as it may think fit. The court may order real estate to be sold, if required; and, where real or personal estate is the subject of proceedings, it may allow to parties a portion of the whole of the annual income.

When the mortgagee is in possession, the mortgagor is barred by 3 & 4 W. 4, c. 27, at the end of twenty years, unless in the interim the mortgagor has received from the mortgagee some acknowledgment of his claim *in writing*.

A mortgage is often effected by a simple deposit of deeds: and if a memorandum in writing accompanies the deposit, equity will consider it a mortgage, and decree payment or sale of the property mortgaged. If no memorandum accompanies the deposit, the court will not readily interfere, and the lender has generally to go to a court of law for his money, retaining the deeds till he is paid. In a mortgage of real estate, the consent of the wife by deed is necessary to bar her of dower, if married before January 1, 1834.

It has become the practice, of late years, to insert in a mortgage an *absolute power of sale*, in case of breach of the condition of the deed; this power it is not always advisable for the mortgagee to avail himself of.

By 4 & 5 W. & M. c. 16, if any person mortgage his estate a second time, and do not inform the mortgagee, in writing, of the prior mortgage, or of any judgment or incumbrance he has voluntarily brought upon the estate, the mortgagee shall hold the estate as an absolute purchaser, free from the equity of redemption of the mortgagor. But the statute does not bar the widow of any

mortgagor from her dower, who did not legally join with her husband in such second mortgage, or otherwise exclude herself.

It is held to be an established rule of equity that the second mortgagee, who has the *title deeds*, without notice of a prior incumbrance, shall be preferred; because the negligence of the first mortgagee, in lending money without taking the title deeds, enables the mortgagor to commit a fraud, 1 *T. R.* 762.

Whatever may be the value of the estate, it is of great importance to those who lend money upon real security to be certain that there is no prior incumbrance upon it; for it is settled, that if a third mortgagee, who, at the time of his mortgage, had no notice of the second, purchase the first mortgage, even pending a bill filed by the second to redeem the first, both the first and third mortgages shall be paid out of it before any share of it can be appropriated to the second: the reason assigned is, that the third, by thus obtaining the legal estate, has both law and equity on his side, which supersede the mere equity of the second. But, in mortgages where none has the legal estate, the rule in equity is that the *prior mortgagee has a prior claim*.

When two different estates are mortgaged to the same person, one cannot be redeemed without the other, *Amb.* 733. So of the other securities given by the mortgagor to the mortgagee.

The investment of estates of infants and lunatics on mortgage, unless under very special circumstances, is not allowed, 1 *Cooper*, 157.

The 3 & 4 V. c. 55, amended by 8 & 9 V. c. 56, enables the owners of settled estates to defray the expense of draining them, by way of mortgage. These acts apply to England and Ireland.

CHAPTER IV.

Wills and Testaments.

A WILL or testament is an act whereby a man declares his intention as to the disposal of his property after his decease.

The person who makes a will is called a *testator*; he who dies without a will is called an *intestate*.

A gift of land or tenements, by will, is called a *devise*; the person to whom they are given, the *devisee*; and the person who makes the will, the *devisor*.

I. DESCRIPTION OF WILLS.

Wills are of two kinds, *written* or *verbal*; the latter is called nuncupative will, being made by word of mouth before witnesses

and, till recently, was legal in case of sudden illness or emergency, if afterwards reduced to writing. But a verbal will never extended to the real estate, only the personal; and of the personal estate it was invalid, if the value of the property bequeathed exceeded £30, unless proved by the oaths of three witnesses present at the utterance of the same. All verbal wills, however, made subsequent to December 31, 1837, are rendered invalid, except those of soldiers in actual service, and of sailors at sea, who may dispose of their personal property as heretofore.

The 1 V. c. 26, besides rendering void all future parole or nuncupative wills, effects other important changes in the old law of testamentary disposition. 1. Wills of *personal* estate must now be attested by two or more witnesses in the same manner as devises of *real* estate, which, however, will no longer require the presence of three witnesses. 2. All devisable estates, real, personal, freehold, or copyhold, are now placed on the same footing in the mode of devising them. 3. The power of devise extends not only to property possessed by the testator at the time of making his will, but to that he may subsequently acquire up to the time of his death. 4. No will of a person under twenty-one years of age is valid; nor of a married woman, except such as might be made before the act. This abolishes the power of infants to bequeath personalty, and, in certain manors, copyhold estates. 5. Legacies to an attesting witness, or his or her wife or husband, are void. Therefore, if a testator wishes to give anything to an attesting witness, he must do it in some other way than by a legacy. But creditors and executors can be attesting witnesses. 6. Marriage revokes a will previously made; otherwise a will can only be revoked by being destroyed by the testator, or by his direction, with intent to revoke, or by the execution of a new will. Alterations in wills must be made in the same way as a will is made; that is, must be witnessed and signed. 7. Lastly, wills must be hereafter construed as if made immediately before the death of the testator, unless a contrary intention appears from the terms of the will itself.

The act does not extend to Scotland.

Prospectively, the statute greatly simplified and better secured testamentary dispositions; but it must be borne in mind that the old law continues in force, both as to written and verbal wills, made prior to January 1, 1838.

II. PERSONS NOT QUALIFIED TO MAKE A WILL.

The following persons, either for want of sufficient discretion, or for want of free will, or for criminal conduct, are deemed unqualified to dispose of property by will:—1. Infants under twenty-one years of age. 2. Idiots, lunatics, and persons in their dotage;

but the wills of persons in sound mind at the time of making their wills, are not affected by subsequent insanity or infirmity. 3. A man born deaf and dumb. 4. A drunken man, when so far intoxicated as to be deprived of his reason, unless it appear he had sufficient understanding to comprehend his act. 5. A person convicted of felony cannot make a will, unless he is pardoned, which restores him to competency. 6. Outlaws, whether for crime or debt, cannot bequeath, for their property is forfeited by outlawry. A suicide may devise the *real* estate, but the *personal* estate is forfeited: the crown, however, restores the forfeiture to the widow or nearest of kin.

A married woman is incapable of making a will without the consent of her husband. But, if her husband be transported for life, she may make a will, and act in everything as a single woman. If a married woman have any pin-money, or separate maintenance, she may bequeath it without the husband's consent.

III. PROPERTY DEVISIBLE BY WILL.

By the Wills Act, all property, whether real, copyhold, or personal, is placed on the same footing, and may be devised in the same manner. Formerly no *real* estate could be devised for longer than a term of years; but now every person is enabled to dispose of the whole of his landed property to whom and what object he pleases, and that even to the total disinheriting of the heir-at-law, notwithstanding the vulgar error of the necessity of leaving the *heir a shilling*, or some other legacy, effectually to disinherit him. Some restraints, however, are still continued on devises to *charitable uses* by the Mortmain Acts, which were intended to check the accumulation of land in the hands of religious or corporate bodies, by which it became comparatively unproductive; and also to control the weakness of those who vainly thought to extenuate the wickedness of their lives by leaving their property to be applied to works of piety or charity. The last act of this description is the 9 G. 2, c. 36, and probably the provisions of this law might be safely repealed, in an age inclined to be sceptical in matters of faith, and which, under the guidance of the new school of political economy, is not likely to fall into excess either of posthumous or contemporary benevolence. By this act, no lands or tenements or money to be *laid out therein*, shall be given for or charged with any charitable use whatever, unless by *deed* indented, executed in the presence of two witnesses, twelve calendar months before the death of the donor, and enrolled in the court of Chancery within six months after its execution, and unless such gift be made to take effect *immediately*, without the power of revocation. Due to the two universities, and to the colleges of Eton, Winchester and Westminster, are excepted out of the statute; and by 5 & 6 c. 39, s. 3, to the British Museum.

In the opinion of Lord Hardwicke, persons are at liberty to leave *by will* a sum of money, or other *personal* property, to works of charity, provided it is not directed to be invested *in land*. And by 43 G. 3, c. 107, every person is at liberty, by deed or will, to give real or personal property for the augmentation of Queen Anne's bounty. Another act, in the same year, allows devises by deed enrolled, or will executed three calendar months before the death of the testator, of real or personal property to the amount of £500 for the repair of any church or parsonage-house.

By 1 W. 4, c. 40, the undisposed of residue of testators' estates goes to the executor or trustees for the next of kin, unless executor was intended to take beneficially. This act is extended, by 11 & 12 V. c. 89, to the land of deceased debtors.

IV. DIRECTIONS FOR MAKING A WRITTEN WILL.

It is not necessary a will should be written on *stamped* paper; no stamp-duty attaches till after the death of the testator, and the will is proved in the proper court in the district within which the testator died. Whether a will be on paper or parchment, or any other material, is of no consequence; nor what hand it be written in; nor whether some words be omitted, or the name be written at large, or only by notes or characters; the most essential points are that the will be *legible*, and so far *inielligible* that the intention of the testator can be collected from it.

The chief points to be observed in making a will are the following:—

1. A will of any kind of property must be in *writing*.

2. If the testator does not sign, it must be signed by some other person in his presence, and by his direction.

3. The signature must be made, or acknowledged, by the testator, in the presence of *two* or more witnesses present at the same time.

4. The witnesses must attest and subscribe the will or codicil in the presence of the testator, and attest that the will was signed, or his signature acknowledged, by the testator in their presence.

Lastly, in respect of the signature of the testator, an act of 1852 has introduced some amendments. The Wills Act provides that "no will shall be valid unless it be signed at the foot or end thereof by the testator, or by some other person in his presence and by his direction." But on this proviso the 15 V. c. 24 enacts in substance that every will, so far as regards the position of the signature only of the testator, or of the person signing for him shall be valid, if the signatures be so placed at or after, or following or under, or beside or opposite to, the end of the will, that it shall be apparent on the face of the will that the testator intended to give effect by such his signature to the writing signed as his will.

In the case of two devises of the same estate to different persons in the same will, the latter shall not defeat the former: but both devisees shall take the moieties, and have the estate either in common or joint tenancy, as the words in the will seem to point out.

Wills under the influence of importunity or coercion are void, although the restraint was merely imaginary, the will being contrary to the wishes of the testator.

Any fraud or imposition vacates a will, and the courts of equity and ecclesiastical courts have a concurrent power to investigate the facts. In general, the intention of the testator is so entirely regarded in the construction of wills, that any kind of disposition, not expressly contrary to the rules of law, constitutes a valid will.

When two wills are made, and neither of them dated, the maker is declared to have died intestate, it being impossible to ascertain which is the last will.

As to the time and manner of the *attestation*, it is necessary the witnesses subscribe the will in the presence of the testator; and their business is not only to witness the manual act of signing, but also to bear testimony to the *sanity* of the testator.

In a devise of real estates, the witnesses retired and attested the will in an adjoining room, a wall only of which was visible from the bed in which the testator lay, so weak as to be incapable of moving without assistance. It did not appear in what part of the room the witnesses signed the will, but it was held duly attested, the jury finding it attested in such a place that the testator had the *means of seeing* what was done. *Todd* v. *Earl of Winchelsea*, *Moo. & Malk.* 12.

The *publishing* of a will, that is the testator declaring that such is his will, is not now requisite, signing and attesting being sufficient.

V. REVOCATION OF A WILL.

With whatever form and solemnity a will may be made, the testator is at full liberty afterwards to revoke or annul it. But no will can be revoked by any *words*, or by word of mouth only; it can only be done by the testator's purposely burning or destroying the original will, or by some subsequent will or codicil, in writing, duly attested, by which the former will is repealed.

When a man, having made a will, afterwards makes another, contrary to it, without expressly revoking the former, this is a revocation in law; the fact of making a new will implying that the testator had *mentally* revoked the old one. But such an implied revocation will not hold unless the dispositions of the second will be clearly incompatible with the first, and the second will be effective at the death of the testator.

The alteration of a will is only a revocation to the *extent* of the alteration; and the alteration must be made with the same forms as the will; that is, must be witnessed and signed.

Marriage revokes a will previously made.

A codicil is a revocation of a will, if contrary to it; but so far only as it is repugnant to the particular disposition of the will, leaving it in all other respects undisturbed.

A will may also be revoked on the ground of mistake in the intention of the testator; but when a testator revokes a legacy, under an obvious misapprehension of the facts, as, for instance, that the legatee is dead, who, in truth, is alive, the revocation fails.

VI. CODICILS.

A codicil is a supplement or addition made to a will by the testator adding to, explaining, or altering some part of his former disposition. It may be written on the same paper, or affixed to or folded up with the will; or it may be written on a different paper, and deposited in a different place.

In general, the law relating to a codicil is the same as that relating to wills, and the like guarantees of signature and attestation are required.

Though a man can properly make only one will, he may make as many codicils as he pleases, and the last is equally valid with the first, if not contradictory.

If, by two codicils, the same thing is given to two individuals, the law enjoins that they must divide it between them.

VII. PRACTICAL REMARKS ON WILLS.

There is danger in trusting to *printed forms* of wills, or the employment of a schoolmaster or vestry clerk. To save a few guineas in their lifetime, some testators will leave behind them a will which may cost hundreds to have expounded by the courts, before conflicting claimants will desist from litigation.

In making a will a person should be careful to give such a description of himself as may avoid any confusion or uncertainty. This description is called in law his *addition*, and means the designation of his christian and surname, his place of abode, trade, and occupation. Care should also be taken in describing the *legatees*, lest the objects of the testator's bounty fail in their legal claims.

Where a man has a large family to provide for, it is often advisable to direct all his property to be turned into money, out of which he may order his debts and legacies to be first paid, and the residue to be laid out at interest, in the names

of trustees, for the benefit of his family.—*Lord St. Leonard's Handy Book on Property Law.*

In making a provision for natural children, pains should be taken to describe them correctly, so that they may not be excluded by the heir-at-law or next of kin.

When a person is desirous of leaving a legacy to a *married woman*, if he does not appoint trustees over it, and give specific directions that it shall be for her sole and separate use, free from the control, debts, and incumbrances of her husband, the husband by virtue of the marital tie will be entitled to the legacy. Without the like precaution, a legacy to a *single* woman will, by the operation of law, vest in the husband in the event of her marriage; but a bequest to a married woman, "solely and entirely for her own use and benefit during her life," has been held to be "a bequest for her life for a separate use," 2 *Collyer*, 247. (*See* Married Women's Property Act, supra, p. 413).

The operation of the *stamp duties* is of importance to persons possessed of little property, and a considerable saving is made by persons making a will in preference to dying intestate, and leaving their effects to be administered to by the next of kin. In the latter case, the duty is half as much more as in the former.

In legacies to *servants*, if the testator intend the duty should be paid by the executors, out of the residue, such intention should be clearly expressed; otherwise, by the abstraction of the duty, they may receive much less than the donor intended.

If there be two legacies to the same person, and if, together, they amount to £20 in value, the duty is rated jointly on both.

It is recommended to the testator, that, besides the original will, he should write and execute two or more copies; they will guard against accidents, be useful to executors and friends, and save expense; for, after a will is proved, a copy cannot be obtained without considerable trouble and cost.

Lastly, if your will is written on several sheets of paper, take care they are all fastened together, and that the pages are numbered. Sign your name at the bottom of each sheet, and state at the end of your will of how many pages your will consists. If there are any *erasures* or *interlineations*, put your initials in the margin opposite to them, merely to identify them, and notice them in the *attestation*. The attestation of the will may be in this form:—"Signed by the above-named testator, in the presence of us present at the same time, who have hereunto signed our names as witnesses thereto, in the presence of said testator, and in the presence of each other" (*Lord St. Leonard's Handy Book*); concluding with reference to the pages, if any, of the erasures or interlineations.

VIII. WILLS OF PERSONALTY MADE ABROAD.

By 24 & 25 V. c. 114, the will of a British subject, whatever at the time may be the domicile of the testator, is, as regards *personal estate*, valid if executed either according to the law of the place where made, or where the testator was domiciled when made, or if made agreeably to the law in force in that part of her Majesty's dominions where he had his domicile of origin. Will made in the United Kingdom, whatever the domicile of testator when made, is valid and admissible in probate, s. 2. Subsequent change of domicile not to invalidate a will duly executed. Nothing in the act to invalidate will of personalty previously executed.

The law in the same session of 1861 is further amended in relation to the wills and domicile of British subjects dying while resident abroad, and of foreigners dying while resident in her Majesty's dominions. By s. 1, when a convention has been made with a foreign state that shall be applicable to the subjects of each, her Majesty, by order in council, may direct that no British subject dying in a foreign country shall be deemed to have acquired a *domicile unless resident there for one year* immediately preceding his death, and shall also have lodged in some public office a declaration in writing of the intention to become domiciled in some foreign country; and for all purposes of testate or intestate succession as to movables, the domicile previously possessed shall remain. The like restrictions are made, under like circumstances, as to any foreigner dying within the United Kingdom; and s. 3 exempts from the operation of the act foreigners who may have obtained letters of naturalization in the United Kingdom. After a convention made, a foreigner dying within the United Kingdom, leaving no person present rightfully entitled to administer to the estate, the consul, vice-consul, or consular agent of the place where such foreigner may die, is empowered to take possession of the property of the deceased, to apply the same in payment of debts and funeral expenses, and to hold the remainder for the benefit of the persons entitled thereto, and may obtain letters of administration from the proper court, limited in such manner as the court deem fit.

CHAPTER V.

Intestacy.

A PERSON dying without a will, or without a will executed according to the legal forms described in the last chapter, is said to die INTESTATE: in this case, it is important to inquire in what

manner the law disposes of the property of an intestate, conformably to the rule of heirship or hereditary descent; and, first, of the *real estate*.

The eldest son inherits, as heir-at-law, the real property of an intestate. If the eldest son is dead, his eldest son, or issue, succeeds to the land. If the eldest son is dead, without issue, then the lands descend to the second, third, and all other sons of the intestate respectively, in order of birth, and to their issue, in like order.

If a man has no sons, nor any issue of them living at his death, his daughter is to inherit; or if he has more than one daughter, they all inherit equally, and become joint partners in the land. If the daughters are dead, leaving issue, such issue inherit the land, the eldest son of each taking his mother's share; or if no son, then daughters equally.

If a man die without either sons or daughters, the land descends to his eldest brother of the *whole blood*, or his issue; or, in case of the death of the eldest brother, without issue, then to his second, third, or other whole brothers respectively, in order of birth or their issue. If the intestate has no brothers, then to his sisters of the whole blood equally. If he has neither sons nor daughters, brothers nor sisters, the land goes to the eldest uncle by the father's side, and his issue; or for want of such, to his other uncles, by the father's side. In defect of all these, to his aunts on the father's side, equally among them all, in like manner as to his daughters and sisters.

The law of inheritance, in failure of lineal descendants, described in the last paragraph, applied only to descents which took place prior to January 1, 1834, from which time 4 W. 4, c. 106, s. 6, came into force; by which it is enacted, that the *lineal* ancestor may be heir in preference to a *collateral*. The effect of this alteration of the old law of descent is, that the ascending line, in every instance, comes into the succession immediately after the descending. Thus the father succeeds before brothers and sisters, and the grandfather before uncles and aunts.

Hitherto, in the descent of lands, relations of the *half blood* could never inherit. Thus, if a man had two sons by different wives, and died, and his first son took the land as heir to him, and died without issue, the son by the other mother, being only his *half* brother, could never inherit the land as heir to his brother. But in the act just mentioned, the distinction between the whole and the half blood is in a great measure abolished; and the law of succession to *real* property made more conformable to that of *personal* estate; in the distribution of which, as described in the next section, the half blood share equally with the whole blood.

II. DISTRIBUTION OF THE PERSONAL ESTATE.

The division of the *personal* property of an intestate is regulated by the 22 & 23 C. 2, c. 10, called the Statute of Distributions, which provides that the surplusage of the effects of an intestate, after paying his debts and funeral expenses, shall, after the expiration of a year, be distributed by the administrators, in certain proportions.

If the deceased leave a widow and children, one-third to the widow, and the remaining two-thirds, in equal portions, to the children; or if any of the children be dead, to their issue in equal portions. If the intestate leave no children, nor lineal descendants of children, then a moiety goes to the widow, and the residue to the nearest of kin of the deceased or their representatives. If the intestate leave children, but no widow, then the whole is distributed among the children; or if any of them be dead, among their representatives.

If a child shall have been portioned, or otherwise provided for, by the father during his lifetime, to an amount equal to the distributive share of the other children, he shall be excepted from this distribution; and if he shall have been in part provided for, he shall have only so much of the surplusage as will make his share equal to the rest. But the *heir-at-law* will have his *full* distributive share, notwithstanding the land he may receive by descent; if, however, he has had an advance in money, he abates the same as another child.

If there is neither wife nor children living, nor representatives of children deceased, the whole property of the intestate is given to the father of the deceased. If he has no father living, the whole shall go to the mother, brethren, and sisters of the deceased, in equal portions. If there are neither brothers nor sisters, the whole shall go to the mother.

If the mother be dead, the whole must go to the brothers and sisters, and their children; but, if there are neither mother, brother, nor sister, then the whole must go to the grandfather or grandmother.

After these, uncles, aunts, and nieces of the intestate are admitted in equal portions. And, on failure of all the above-mentioned relatives, then the whole shall go to the next nearest of kin who shall be alive.

In conclusion, it is curious to remark the vicissitudes in the law of inheritance. Before and at the Conquest all the children, both male and female, inherited as well the real as the personal estate of the ancestor equally; but in the reign of Henry I. females, in case there were males, began to be excluded from the real estate; and in the reign of King John the right *of primogeniture* had become prevalent over partible *descent, and universal* in the kingdom, except in *Kent, where the old law of equal inheritance* among

males, or gavel-kind, is still observed by the judges as part of the common law of the county.

III. RELIEF TO WIDOWS AND CHILDREN OF POOR INTESTATES.

By an act passed last session (1873), 36 & 37 V. c. 52, the facilities for taking out letters of administration to the estates and effects of intestates, where they are under the value of £100, were increased. The widow, or any one or more of the children of an intestate, if residing at a distance exceeding three miles from the nearest district registry of the court of Probate, may apply to the registrar of the county court within the district in which the intestate had a fixed abode at the time of his death, and the registrar is to fill up the usual papers required by the court of Probate in cases of intestacy, and is to swear the applicant and attest the execution of the administration bond, according to the practice of the court of Probate, and is to transmit the papers by post to the registrar of the court of Probate having jurisdiction in the matter, who, in due course, is to make out and seal the letters of administration, and transmit them by post to the said registrar of the county court, to be by him delivered to the party applying, without the payment of any fee except as provided in the act, and mentioned below. The registrar may require proof of the identity and relationship of the applicant, and if he believe that the estate and effects of the intestate exceeds £100 in value, he is to refuse to proceed with the application until he has ascertained the value. The registrars may also exercise the powers of the commissioners of the court of Probate. The judge of the court of Probate may frame or alter any rules and tables of fees necessary to carry the act into execution, subject, as regards the fees, to the approval of the commissioners of the treasury; but the total amount to be charged to applicants is not to exceed 5*s.* where the estate is under £20, and 5*s.* and 1*s.* for every £10 over £20 where the estate exceeds £20. This act is not to affect the duty on administrations, and it applies to Ireland.

CHAPTER VI.

Legacies.

A LEGACY is a bequest or gift of money, goods, or chattels, by will or testament; the person to whom it is given is called a *legatee*; and if the gift is of the residue of an estate after

payment of debts and other legacies, he is called the *residuary legatee.*

The bequest of a legacy confers only a contingent or inchoate property on the legatee, which does not become complete until the assent of the executor or administrator with the will annexed, as the case may be, has been given. But before such assent the bequest is transmissible to the personal representative of the legatee, and will pass by his will. The assent of executor or administrator, however, cannot be refused, except so far as this, that he is not bound to admit that there is any property due to the legatee till the debts of the deceased are first paid.

If executors omit to pay legacies at the expiration of one year after the death of the testator, the legatees will be entitled to interest from that period. But no action can be brought for the non-payment of a money legacy; the Court of Chancery being the proper jurisdiction for redress, *Deeks* v. *Strutt*, 5 *T. R.* 690. Generally an executor cannot be compelled to pay legacies until after the expiration of twelve months from the testator's decease, and not even then, unless the assets should be realized, and the debts paid and provided for; but, as the rule is only for the several convenience of executors, if it should appear that all the debts of the testator are paid, the executor may be compelled to pay legacies before the twelve months have expired.

Interest is payable from the testator's death on a legacy to a natural child, with directions to apply a competent part of the interest for its maintenance, 3 *Swanst.* 689.

In case of a deficiency of assets to pay the debts, all the general legacies must abate proportionally; but a specific legacy of a piece of plate, a horse, or the like, is not to abate, unless there be not sufficient without it. And, if the legatees have been paid, they are afterwards bound to refund a rateable part, in case debts come in more than the amount of the residue after the legacies are paid.

If a legatee die in the lifetime of the testator, the legacy falls into the residue of the personal estate; but if the bequest is so clearly worded as to show the testator intended it to go to the children or representative of the legatee in case of his death in the testator's lifetime, the legacy will not fall into the residue.

If a contingent legacy be left to any one, as when or if he attain the age of twenty-one, and if he die before that time, it is a *lapsed* legacy. But a legacy *to be paid* when he attains the age of twenty-one years is a vested legacy; and if the legatee die, his representative shall receive it at the time it would have become payable had the legatee lived. The reason of this distinction is, that the insertion of the words "*to be paid*" have the effect of *immediately* vesting the legacy, and the period mentioned is not a condition of payment, but the completion of the time when the legatee should be put in complete possession.

But the old rule in respect of *lapsed legacies* has been modified by the Wills Act; and the 1 V. c. 26, s. 33, provides that, when legacies are bequeathed to a child or other issue of a testator, who shall die in his lifetime, leaving issue, and such issue shall be living at the testator's death, the legacies shall not lapse, unless a contrary intention shall appear upon the face of the will; but shall take effect as if the legatee had died immediately after the testator.

General conditions imposed on legatees not to marry are void, as *immoral*, by tending to prevent the multiplication of the species; but conditions which restrain marriage within a reasonable time, or to particular persons, are good, because the liberty of marriage is not taken away, only a qualification imposed, which may be expedient. So a condition by a husband, that his wife shall be entitled to a legacy he has left her only so long as she continues his widow, is binding.

Legacies bequeathed to women married before the 9th of August, 1870, ought, in general, to be paid to their husbands; but the executor, with the consent of the wife, may withhold the payment of such legacies till the husband consent to a suitable provision or settlement on the wife.

An inaccurate description or addition of a legatee, correctly named, will not destroy the effect of a legacy given to him by nomination. So, also, if the testator mistake the name of the thing bequeathed, having no other thing to which the term can be applied, the wrong description of the bequest will not defeat the legacy.

In leaving two separate legacies of the same amount to the same person, it is proper to express whether the second legacy be an addition to, or in lieu of, the first legacy.

Unless the testator has otherwise directed, the residuary legatee is entitled not only to what remains after the payment of debts and legacies, but also to whatever may fall into the residue after the date and making of the will.

No legacy can be recovered in any court after twenty years next after a present right to receive it accrued to some person capable of giving a discharge or release for the same, unless some principal or interest has been paid thereon, or an acknowledgment in writing, signed by the party liable to pay, or his agent, and then only within twenty years after the last of such payments or acknowledgments; and the recovery of interest is limited to the last six years.

Legacies to witnesses of a will are void by 1 V. c. 26.

Lastly, in the bequest of legacies be careful to specify the fund out of which they are to be paid, otherwise no fund for the purpose may be found to exist, as was the case with the legacies nominally left by the notorious Alderman Wilkes.

CHAPTER VII.

Bills of Exchange.

A BILL of exchange is a mercantile instrument, generally written on a broad but short slip of paper, whereby one person orders or requests another to pay a certain sum of money, on his account, to a third person, or to his order, at a time therein specified.

The person who makes or draws the bill is termed the *drawer;* he to whom it is addressed is, before acceptance, called the *drawee,* and afterwards the *acceptor;* the person for whom it is drawn is termed the *payee,* and when he endorses the bill the *endorsee;* and the person to whom he transfers it is called the *endorser;* and in all cases the person in possession of the bill is called the *holder.*

Bills are either *foreign* or *inland; foreign,* when drawn by a merchant abroad upon his correspondent in England, or the contrary; *inland,* when both the drawer and drawee reside in the kingdom. Formerly, foreign bills were regarded of more importance in the eye of the law than inland bills; but now they are both nearly placed on the same footing, and the law and custom of merchants in regard to one extend equally to the other.

Inland bills generally consist of one piece of paper; but foreign bills may consist of several *parts,* in order that the bearer, having lost one, may receive his money on the other. The several parts of a foreign bill are called a *set;* each part contains a condition that it shall be paid *provided the others are unpaid.*

By the Mercantile Law Amendment Act of 1856, the 19 & 20 V. c. 97, s. 7, every bill of exchange or promissory note drawn in any part of the United Kingdom or the Channel Islands, or islands adjacent, and made payable in, or drawn upon any person resident within, those dominions of her Majesty, is deemed an inland bill.

No particular form or set of words is necessary in a bill, any more than in a bond or other deed: the following, however, is the usual style of foreign and inland bills:—

Form of a Foreign Bill.

Exchange for 5,000 *Francs.*

London, 1*st March,* 1839.

At twenty days after date [or at one or two usance, or at sight, or certain days after sight, as the case may be], *pay this my first bill of exchange* (*second and third of the same tenor and date not paid*) *to Messrs. Arthur Jones and Co., or order* [or bearer], *five thou-*

sand francs, value received of them, and place the same to account, as per advice from

ROBERT ANDREWS.

To Messrs. Dumont and Mallecot,
Banquiers, Paris.

Form of an Inland Bill.

£100 *London, 3rd March*, 1839.

Two months after date [or at sight, or on demand, or certain days after sight, as the case may be], *pay to Mr. Thomas Brown, or order, one hundred pounds. Value received.*

DANIEL HARDCASTLE.

To Mr. Henry Heaps,
Hosier, Bristol.

The chief property of a bill of exchange is, that it is *assignable* to a third party not named in the bill, so as to vest in the assignee a right of action in his own name; which right of action, no release by the drawer to the acceptor, or set-off, or cross demand due from the former to the latter, can affect.

II. PARTIES TO A BILL OF EXCHANGE.

Persons under age, and married women, are incapable of being parties to a bill of exchange.

But though no action can be maintained on a bill drawn, endorsed, or accepted by persons so incapacitated, yet it is valid against all other competent parties thereto. Thus, in an action against the acceptor of a bill by the endorsee, it is no defence that the drawer was at that time an infant, or feme covert; for, though the holder is precluded from suing any anterior party, he will still be at liberty to sue any subsequent party to the bill.

As agency is a ministerial office, persons incapable of contracting in their own right may be agents for this purpose. A bill drawn, endorsed, or accepted by the party's agent is said to be done by *procuration*. But, in such case, it is incumbent on the agent, if required, to produce his authority to the holder, and if he do not, the holder may treat that bill as dishonoured.

When a person acts as agent in a bill, he must either write the name of the principal, or state, in writing, that he acts as agent, otherwise the act will not be binding on the principal; and if a person act in his own name, without stating that he acts as agent, he will be personally liable, unless in the case of an agent contracting on behalf of Government.

Corporations, by the intervention of their agents, may be parties to a bill of exchange.

III. REQUISITES OF A BILL.

The two principal requisites to a good bill are, first, that it is payable *at all events*, not dependent on any contingency, nor payable out of a particular fund; and, secondly, that it be for the *payment of money only*, and not for the payment of money and the performance of some other act, as the delivery of a horse or the like.

If, however, the event on which the payment is to depend must inevitably happen, it is of no importance how long the payment is deferred. Therefore if a bill be drawn payable six weeks after the death of a drawer's father, or payable to an infant when he shall come of age, it is valid and negotiable; so, in order to pay money as the drawer's quarter or half-pay, by advance, is a good bill.

A bill cannot be given in evidence either in law or equity unless it be *duly stamped*, not only with a stamp of the proper value, but also of the proper denomination.

The *date of a bill* ought to be clearly expressed in words. But the date is not essential to the validity of the bill; for, when the date has been omitted, it will be intended to bear date on the day when it was made. The omission of the date for the purpose of the holder supplying the date at his convenience renders the instrument void; being an interference with the operation of the stamp duties.

The *negotiability* of a bill depends on the insertion of sufficient operative words of transfer. The modes of making a bill transferable are by making it payable to A. or order, or to A. or bearer, or to bearer generally.

If a bill, after it has been drawn, accepted, or endorsed, be *altered* in any material respect, without the consent of the parties bound therein, it will discharge them from all liability. But the mere correction of a mistake, as by inserting the words "or order," will not vitiate the bill, if made before the bill was circulated.

It is not essentially necessary to insert the words "*value received*," they being employed in every bill and endorsement. But, to entitle the holder of an inland bill of £20 and upwards to recover, in default of acceptance or payment, these words should be inserted.

IV. OF THE CONSIDERATION.

A bill is presumed to have been originally drawn upon a good and valuable *consideration*. But a want of sufficient consideration may be insisted on in defence to an action on a bill; and when the bill is for accommodation, and the holder has given value only for a part of that amount, he cannot recover on the bill beyond that sum.

The bill may be void if the consideration given has been made illegal by statute; as for signing a bankrupt's certificate for money won at *gaming*, or for money bet, or on an *usurious* contract. But, with respect to gaming, it is held that a bill founded on a gambling transaction is good in the hands of a *bonâ fide* holder; and by the 58 G. 3, c. 93, a bill or promissory note, though founded upon an usurious contract, does not vitiate the same in the hands of a *bonâ fide* holder, not knowing the usurious contract.

Dropping a criminal prosecution, suppressing evidence, or compounding a felony; a recommendation to an office in the queen's household; a smuggling or stock-jobbing contract, are all illegal considerations.

A bill or promissory note given for past seduction is valid; but for future prostitution illegal.

No person can insist upon a want of consideration who has himself received one; nor can it ever be insisted on if the plaintiff, or any intermediate party between him and the defendant, took the bill *bonâ fide* and upon good consideration.

V. ACCEPTANCE OF A BILL.

An acceptance is an engagement to pay a bill according to the tenor of the acceptance; which may be either *absolute* or *qualified*. An *absolute* acceptance is an engagement to pay the bill according to its request, which is done by the drawee writing "Accepted" on the bill, and subscribing his name; or writing "Accepted" only, or merely subscribing his name at the bottom or across the bill. Any act, indeed, of the drawee, which demonstrates an intention to comply with the request of the drawer, will amount to an acceptance. An expression, *Leave the bill and I will accept it*, or a direction to a third person to pay the bill *written* thereon, is a sufficient acceptance. A verbal promise that *if the bill came back he would pay it*, was held a good acceptance.

An acceptance may be *implied* as well as *expressed*; and this implied acceptance may be inferred from the drawee keeping the bill a great length of time, or any other act which induces the holder not to protest it, or to consider it as accepted. But a promise to accept a bill not then in existence is void, unless it influence some person to take or return the bill.

A *qualified* acceptance is when a bill is accepted conditionally; as when goods conveyed to a drawee are *sold*, or when a navy-bill is *paid*, or other future event, which does not bind the acceptor till the contingency has taken place, when such conditional acceptance will become as binding as an absolute acceptance.

An acceptance may also be *partial*; as, for instance, to pay £100 instead of £150, or to pay at a different place or time from that required by the bill. But, in all cases of a conditional or partial

acceptance, the holder should, if he mean to resort to the other parties to the bill, in default of payment, give notice to them of such conditional or partial acceptance.

By 19 & 20 V. c. 97, no acceptance of any bill of exchange, whether inland or foreign, made after December 1, 1856, will be sufficient to bind or charge any person, unless the same be in writing on such bill, or, if there be more than one part, on one of such parts, and signed by the acceptor, or some person duly authorized by him.

A bill need not be presented for acceptance when it is payable at a certain day, because the time is then running on equally, whether accepted or not, and the responsibility of the drawer is not protracted. If it be payable at a certain time *after sight*, then it is necessary to present it within a reasonable time, because, by not doing so, the responsibility of the drawer is indefinitely protracted. *Bayley on Bills*, 112.

When the drawer refuses to accept, any third party, after protesting, may accept for the honour of the bill generally, or for the drawee, or for a particular endorser; in which case the acceptance is called an acceptance *supra protest*.

The alteration of the date of a bill after acceptance, whereby the payment would be accelerated, vacates the instrument; and no action can afterwards be brought upon it, even by an innocent endorsee, for a valuable consideration. *Master* v. *Millar*, *Pratt. Dig.* 207.

If a bill be drawn on several persons not connected in copartnership, an acceptance by one will bind him, but him only. But, in case of joint traders, an acceptance by one will bind the rest.

In case of the failure of the drawer, the drawee ought not to accept bills after he is aware of that circumstance. But if the drawee, not having notice of the bankruptcy of the drawer, accept a bill drawn upon him after such bankruptcy, he will be justified in payment of such acceptance, although he has afterwards heard of such bankruptcy.

A bill payable at the house of the acceptor's banker must be presented for payment within the usual banking hours, which in London do not extend beyond five o'clock. If it be presented after such hours without effect, it is no evidence of the dishonour of the bill, so as to charge the drawer.

If a bill is made payable after *sight*, the date of the acceptance should appear thus:—"*Accepted, Jan.* 1, 1827."

By the 1 & 2 G. 4, c. 78, bills accepted, payable at a banker's or other place, are to be deemed a *general* acceptance; but if they are accepted, payable at a banker's or other place ONLY, and not otherwise or elsewhere, they are to be deemed a *qualified* acceptance, and the acceptor is not liable to pay the bill, except in default of payment, when such payment shall have been first duly demanded at such banker's or other place only. It is also provided,

by the same act, that no acceptance of any INLAND bills of exchange is sufficient to charge any person, unless such acceptance be in *writing on the face of such bill*, or, if there be more than one part of such bill, on one of the said parts.

In case of *accommodation* acceptances, it is advisable to have a written undertaking, or a counter bill or note from the drawer.

The 19 & 20 V. c. 60, ss. 6, 7, for assimilating the laws of the two kingdoms, requires that no acceptance of a bill of exchange in Scotland, whether inland or foreign, shall bind the acceptor unless it be in writing.

VI. LIABILITY OF ACCEPTORS,

The acceptor of the bill is liable to all the parties for payment, from which obligation he can only be relieved by express release, or the Statute of Limitations; but in the latter case, though six years have elapsed, the acceptor's liability revives, if he *acknowledge* his acceptance, *Leaper* v. *Tatton*, 16 *E.R.* 420; such acknowledgment, however, by 9 G. 4, c. 14, must be *in writing*, signed by the party to be charged therewith. Even the drawer may maintain an action against the acceptor, provided he has paid the bill and has effects in the hands of the acceptor. Neither can the acceptor discharge his liability by the erasure of his name, unless his acceptance has been made by mistake.

A verbal release of the acceptor's liability would suffice; but to render this efficient, the words must amount to an absolute renunciation of all claim upon him for the bill.

If a bill be presented, and an acceptance refused, or a qualified acceptance only offered, or other objection made, prompt notice must be given to all the parties to whom the holder intends to apply for payment.

In case of a *foreign* bill, notice may be given on the day of the refusal to accept, if any post, or ordinary conveyance, sets out on that day; and, if not, by the next early ordinary conveyance.

Generally, in both foreign and inland bills, notice is given next day to the immediate endorser, and such endorser is allowed a day, when he should give fresh notice to those parties who are liable to him; without promptitude in giving notice, the drawer and the endorsers are discharged from their liability.

The absconding or absence of the drawer or endorser may excuse the neglect to advise him; and the sudden illness or death of the holder or his agent, or other accident, will be an excuse for want of a regular notice to any of the parties, provided it has been given as soon as possible after the impediment was removed.

In case of bankruptcy, notice must be given to the assignees, and, if the party be dead, to the executor or administrator. If the party be abroad, notice may be left at his usual residence, and a demand of payment from his wife would, in such case, be regular.

In case of inland or foreign bills, notice by the post is sufficient; but the letter containing such notice should be delivered at the General Post Office, or, at least, at a receiving-house appointed by that office.

If the notice of dishonour be *posted* in due time by the holder, he is not prejudiced by any mistake or delay in the delivery of the Post Office. And it seems (16 *Mees & W.* 124) the post-mark may be proved either by a person from the office, or by others in the habit of receiving letters from that office.

Though there is no prescribed form of notice, yet it ought to import what the bill is, that payment has been refused by the acceptor, and that the holder looks on the person to whom it is given as liable, and expects payment from him, 4 *B. & Cr.* 339.

Where the drawer of a bill draws upon *himself*, it may be deemed a promissory note, and the drawer is not entitled to notice of non-acceptance. The similarity of name and residence is evidence sufficient to warrant the jury in supposing the drawer and drawee to be the same person, *Roach* v. *Ostler*, *M. T.* 1827.

Upon the non-acceptance or non-payment of a bill, the holder should, in the case of a foreign bill, *protest it;* that is, the bill ought to be presented to the drawee by a public notary (to whom credit is due, because he is a public officer), and acceptance demanded. If the drawee refuse to accept the bill, then the notary should draw up a protest for non-acceptance; that is, a minute, comprising a notice of such refusal, and the declaration of the holder against sustaining any loss by such non-acceptance. Inland bills, it is now settled, need not be protested for non-acceptance.

To remove doubts, 2 & 3 W. 4, c. 98, enacts, that bills of exchange expressed to be paid in any place other than the residence of the drawer, if not accepted on presentment, may be protested in that place, unless the amount be paid to the holder on the day on which the bill would have become payable had the same been duly accepted.

Upon non-acceptance and notice, the holder may immediately *sue* the drawer and endorsers, without waiting till the bill becomes due according to the terms of it, 4 *East.* 481.

To prevent delay to *bonâ fide* holders of bills by fictitious actions or defences, the 18 & 19 V. c. 67, provides that all actions upon bills of exchange and promissory notes, if commenced within six months after they become due and payable, may be by writ of summons, in form prescribed; and on filing affidavit of service, plaintiff may at once, if defendant has not obtained leave to appear to such writ, sign final judgment. A like remedy is given to the holder of a dishonoured bill or promissory note for the recovery of the expenses of noting for non-acceptance or non-payment, or otherwise, by reason of such dishonour. One summons will suffice against one or all the parties to the bill.

VII. ENDORSEMENT OF BILLS.

le to *order*, or to *bearer*, or containing any words to
able, may be endorsed over, so as to give the en-
on all the antecedent parties whose names appear
But, unless the operative words, "to order,"
," or some equivalent term, be inserted, it cannot
so as to give the endorsee a claim on any of the
ties, except the last endorser. It is not, however,
validity of a bill that it should be transferable, or
able words to that effect.
ment by pencil marks has been held sufficient, *5 B.*
but is very objectionable.
nsferred either by delivery only, or by endorsement
bills payable to order are transferred by the latter
hat bills payable to bearer may be transferred by

r by *delivery*, the person making it ceases to be a
ill; but, on a transfer by *endorsement*, he is, to all
rposes, chargeable as a new drawer.
be endorsed before it is complete, or after the time
payment. In the first case, if a man endorse a
piece of paper, it will bind him to the amount of
h may be inserted, consistent with the stamp, and
at any date. If the endorsement be after the bill is
mbent on the endorsee to satisfy himself that the
d one; for, if he omit to do so, he takes it on the
endorser, and must stand in place of the person who
the time it became due.
r words are essential to the endorsement of a bill;
nature on the back of a bill is in general sufficient;
ent is called a *blank* endorsement.
pecial endorsement mentions the name of the en-
e favour it is made; as thus, "pay the contents to
," and is subscribed with the name of the endorser.
ndorsement precludes the person in whose favour it
making a *transfer*, so as to give a right of action
ecial endorser, or any of the precedent parties to the
retaining a payment to their prejudice.
ay bill to account or discount, it is important well to
crutinize all special endorsement. Lord Tenterden
hat a person who discounts a bill endorsed "pay A.
, *for my use*," discounts it subject to the risk
the money to the special endorser, who so limits
n of the bill "*for my use*;" thus a party may
the amount of the bill twice over, unless he pay
ain that the payment has been made agreeably to the
endorsement.

After the payment of a part, a bill may be endorsed over for the residue.

A transfer by endorsement will convey no title, except against the person making it, unless it be made by him, who, for a valuable consideration, has a right to make the endorsement. So, in case of a bill lost by theft or accident, if it be only transferable by endorsement, the thief or finder cannot confer a title against the precedent parties: for, unless the endorsement be made by the person to whom the bill is payable, it is a forgery; but, if such bill be payable to *bearer*, and, therefore, assignable by mere delivery, the thief or finder may tranfer a title against the precedent parties by transferring it. Therefore, an innocent holder, for a valuable consideration, may recover the amount of the bill, though the party from whom he took it, having no title, cannot.

But the holder of a bill that has been lost, or fraudulently or feloniously obtained, must, if he sue for payment, prove he obtained it upon good consideration, 4 *Taunt.* 114.

In case of the *loss of a bill*, to entitle the party to recover, he should immediately give notice thereof to the acceptor and all the antecedent parties; and when the bill is tranferable by mere delivery, should also give public notice of the loss; but even this will not avail, unless the notice be brought home to the knowledge of the party taking the bill.

The 9 & 10 W. 3, c. 17, enacts, that "if any inland bill be lost or missing within the time limited for its payment, the drawer shall, on sufficient security given to indemnify him, if such bill shall be found again, give another bill of the same tenor with the first." And in all cases of the loss of a bill, a court of equity will, on sufficient security being given, enforce payment.

VIII. PRESENTMENT OF BILLS.

A party taking a bill, impliedly undertakes to present it to the proper person, at the proper place, and at the proper time for payment; and a neglect of any of these, on the part of the holder, or a failure to give notice of the non-payment of the bill, exonerates the drawer and endorser from their liability.

Bills, however, payable at *usance*, or at a certain time after date or sight, or after demand, ought not to be presented for payment precisely at the expiration of the time mentioned in the bills, but at the expiration of what are termed *days of grace*. Three days' grace are usually allowed for payment; in case of excise bills, six days beyond the three are granted, if required by the acceptor. But, with bills payable on demand, or when no time of payment is expressed, no days of grace are allowed, but they are payable instantly on presentment.

On bank post bills no days of grace are claimed; but, on a bill

payable at sight, the usual days of grace are allowed from the sight or demand.

Upon the last day of grace, and within a reasonable time before the expiration of that day, a bill must be presented for payment: such reasonable time at a banker's or merchant's counting-house in London would be prior to five o'clock; or at any other place presentation might be made as late as eight in the evening. If the last day of grace be Sunday, Christmas-day, Good Friday, or any public fast or thanksgiving day, the presentment must be on the preceding day; and if it be not then paid, the bill may be treated as dishonoured.

Bills and notes payable on the day preceding Good Friday, Christmas-day, or a fast or thanksgiving day, notice of the dishonour thereof may be given on the next day after; or, if the last two fall on a Monday, presentment must be made on Saturday, although the notice of dishonour need not be given till Tuesday.

The bankruptcy, insolvency, or death of the acceptor, will not excuse the neglect to make presentment. In the first cases, the presentment should be made to the bankrupt, or to his assignees; and, in the latter, to the executor of the deceased; or, in case there be no executor, at the house of the deceased.

The days of grace allowed ought always to be computed according to the usage of the place where the bill is due. In Great Britain, Bergamo, and Vienna, *three* are allowed; at Frankfort, out of the fair-time, *four;* at Leipsic, Nuremberg, and Augsberg, *five;* at Venice, Amsterdam, Rotterdam, and in Portugal, *six;* at Naples, *eight;* at Dantzic, Königsberg, and France, *ten;* at Hamburg and Stockholm, *twelve;* in Spain, *fourteen;* at Rome, *fifteen;* at Genoa, *thirty;* at Leghorn, Milan, and some other places in Italy, there is no fixed time. At Hamburg and in France the day on which the bill falls due makes one of the days of grace, but nowhere else.

"The Bills of Exchange Act, 1871" (34 & 35 V. c. 74), provides, that every bill of exchange or promissory note purporting to be payable at sight or on presentation, shall bear the same stamp, and shall, for all purposes whatsoever, be deemed to be a bill of exchange or promissory note payable on demand, any law or custom to the contrary notwithstanding.

USANCE, or the customary time for which a bill is usually drawn, also varies between different countries. An usance between this kingdom and Amsterdam, Hamburg, Paris, or any place in France, is *one month;* an usance between us and Spain is *two;* between Leghorn, Genoa, or Venice, *three.* A double usance is double the accustomed time; a half usance, half; and so on.

If the political state of the country, when the bill is due, render presentment for payment within due time impossible, presentment as soon as possible will entitle the holder to recover.

If a bill has a qualified acceptance, the presentment should be

at the place mentioned in such qualified acceptance, otherwise the parties will be discharged from their responsibility.

The holders of *dishonoured bills and notes* having been frequently put to unnecessary expense by frivolous or fictitious defences, the 18 & 19 V. c. 67, provides that all actions on bills and notes commenced within six months after due may be by a writ of summons in a prescribed form, and the plaintiff on filing affidavit of personal service, may at once sign final judgment. But defendant, upon application to judge within twelve days, and showing a defence on the merits, and paying the sum endorsed on the writ into court, may have leave to appear, and judge under special circumstances may set aside the judgment. Like remedies given for recovery of expenses incurred in the noting for non-acceptance or non-payment of dishonoured bill or note. Holder may issue one summons against all or any of the parties.

IX. PAYMENT OF BILLS.

Payment should be made only to the holder of a bill, or some person properly authorized by him. By the custom of merchants, payment may be refused unless the holder produce and deliver up the bill, 4 *Taunt.* 602.

In all cases of payment of a bill, a receipt should be written on the back; and when a part is paid, the same should be acknowledged upon the bill, or the party paying may be liable to pay the amount a second time to a *bonâ fide* endorser.

The holder may bring actions against the acceptor, drawer, and all the endorsers, at the same time; but though he may obtain judgment in all the actions, yet he can recover but one satisfaction for the value of the bill; but he may sue out executions against all the rest for the cost of their *separate* actions, *Bayley on Bills*, 43.

When a creditor directs his debtor to remit him, by post, the money due to him by a bill, or when it is the usual way of paying a debt, if the bill be lost, the debtor will be discharged; but when the defendant, in discharge of a debt which he owed to the plaintiff, delivered a letter, containing the bill which was lost, to a bellman in the street, it was decided that he was not discharged from the debt, because it was incumbent upon him to have delivered the letter at the General Post Office, or, at least, at a receiving-office appointed by that office.

X. PROMISSORY NOTES.

A promissory note is defined to be a direct engagement, in writing, to pay a specified sum, within a limited time, or on demand, to a person therein named, *or his order*, or to bearer.

By the 3 & 4 Anne, c. 9, promissory notes are transferable, and in all respects so nearly assimilated to bills of exchange, that all the decisions and rules relative to one are, in general, applicable to the other. The chief distinction between them is that there are only two parties to a note, the drawer of a note standing in the place of the acceptor of the bill.

No formal set of words is necessary to the validity of a promissory note; nor is it essential it should contain any words rendering it negotiable. A note merely promising to account with another, or his order, for a certain sum, *value received*, is a valid promissory note, though it contains no formal promise to pay. The following is the usual form of this instrument:—

£100 *London, February* 25, 1834.

Two months after date I promise to pay Mr. Charles Strange, or order, the sum of one hundred pounds, for value received.

GEORGE DORCAS.

An instrument drawn so equivocally as to render it uncertain whether it be a bill of exchange or promissory note, may be treated as either against the drawer by the holder, *Edis* v. *Bury*, 1 *B. & C.* 433.

An *I O U*, dated and signed with initials in this form: "I O U one hundred pounds," would only be evidence of a debt, not a promissory note. But if words were added, expressing a promise to pay on a particular day, it would be a promissory note.

Under the act of Anne, a foreign note is negotiable in England by endorsement, *Moo & Malk.* 66.

A note beginning "I promise to pay," and signed by two or more persons, is a *several* as well as a *joint* note, and the parties may be sued jointly or separately: so, if the note begin, "we jointly and severally promise to pay;" but when a promissory note made by several, thus, "we promise to pay," it is a joint note only.

A note of hand payable by *instalments* is an assignable instrument within the statute of Anne, and the maker of such a note is entitled to the usual three days of grace, when there is a condition that on default of the payment of one instalment the whole shall become due. This was the holding of the Court of Exchequer in the case of Miller *v.* Biddle.

By 55 G. 3, c. 184, bankers who shall have issued promissory notes for payment to bearer on demand, of any sum not exceeding £100, may re-issue the same as often as they think proper. But notes not payable to bearer on demand are not re-issuable, under a penalty of £50; nor without an annual license of £30.

It is only since the passing of the act, in 1797, restraining the Bank of England from paying their notes in specie, that promissory notes under £5 were allowed to circulate; the liberty to circulate *such* notes was, after several renewals, finally determined by 7 G. 4,

c. 6, by which all promissory notes for less than £5 payable to the bearer on demand, issued by the Bank of England, or by any licensed English banker, were prohibited; but notes for less than £5 may still be issued by Irish and Scotch banks.

By 26 & 27 V. c. 105, the acts in England and Scotland which prohibited, under penalty, the negotiating any promissory or other note (not being a note payable to bearer on demand), bill of exchange, draft, or undertaking in writing, being negotiable or transferable for the payment of 20*s.* or above that sum, and less than £5, are repealed.

Regulations of Banks of Issue.—After the passing of the 7 & 8 V. c. 32, no person other than a banker who, on the 6th of May, 1844, was lawfully issuing his own bank-notes, shall make or issue bank-notes in any part of the United Kingdom; nor shall any banker, draw, accept, or issue any promissory note or engagement payable on demand, except in continuance of such issue, from the said 6th of May, but the right of issue not to be affected by any change in the personal composition of a partnership; but any firm now consisting of not more than six persons may not issue notes after the number of partners shall exceed six. Bankers who from any cause shall cease to issue notes are not to be at liberty to resume such issue. Ss. 13 to 29 contain the regulations under which banks of issue are to continue, and prescribe the accounts to be rendered by them, the amounts which they are to be authorized to issue, the manner of the publication of the returns, and other matters of detail.

Caution.—It is of great importance that bankers and others taking bills or notes, should know something of the parties from whom they take them; otherwise, if the instrument turn out to have been lost or fradulently obtained, they may be deprived of their security in an action by the owner, to recover possession. In *Snow* v. *Peacock*, C. J. Abbott said, "If a person take a bill, note, or any other kind of security, under circumstances which *ought to excite suspicion* in the mind of any reasonable man acquainted with the ordinary affairs of life, and which ought to put him on his guard to make the necessary inquiries, and he do not, then he loses the right of maintaining possession of the instrument against the rightful owner." The same point had been previously determined in *Gill* v. *Cubitt*, 3 *B.* & *C.* 466.

XI. BANK OF ENGLAND NOTES.

These notes are payable on demand, and are treated as cash in the ordinary transactions of business. Being payable on demand, they cannot be recovered if lost by the legal owner, unless it can be brought home to the holder that they were obtained without a valuable consideration.

By 3 & 4 W. 4, *c. 98, it is provided,* that during the continuance

of the privileges of the bank, no banking company of more than [illegible] persons shall issue notes payable on demand within London, or sixty miles thereof. But any company or *number of partners* may carry on the business of banking within these limits, provided they do not borrow or take up money on their notes in England, payable on demand, or at any time less than six months. All notes of the bank payable on demand, issued out of London, to be made payable at the place where issued. So long as the bank pays in legal coin, its notes are made a *legal tender*, except at the bank and the branch banks, for all sums above £5: the branch banks only liable to pay the notes they respectively issue: but the Bank of England in London is compellable to pay both the notes issued by the branches and parent establishment. An account of the bullion, securities, notes in circulation, and deposits of the bank, to be weekly transmitted to the chancellor of the exchequer; such account to be published at the end of every month, and an average state of the bank accounts of the three preceding months to be published every month in the *Gazette*.

By 7 & 8 Vict. c. 32, it is enacted, that after the 31st of August 1844, the issue of promissory notes of the bank shall be entirely separated from the general banking business of the company, and [illegible] carried on by a "the Issue Department of the Bank of England." From the same date the company are to set apart and transfer securities to the value of £14,000,000 to the Issue Department, for which the public debt to the company is to be [illegible] part, and so much bullion, and gold and silver [illegible] shall not be required by the banking department; thereupon [illegible] bank notes (including those in circulation) shall be transferred from the Issue Department to the banking department, on the whole the last shall be deemed to be issued on the credit of such securities, coin, and bullion. This amount may be diminished, but not increased, except in certain cases.

Sect. 3 directs that the amount of silver bullion retained by the Issue Department shall not at any one time exceed a fourth part of the gold coin and bullion held at the same time. All persons may demand from the Issue Department notes for gold bullion at the rate of £3 17s. 10½d. per oz. of standard gold.

XII. BANKERS' NOTES AND CHEQUES.

Bankers' cash notes are promissory notes, payable to order, or bearer, on demand, and are transferable by delivery. They may, however, be negotiated by endorsement; in which case, the act of endorsing converts them into a bill of exchange. On account of being payable on demand, they are considered *as money*, but if presented in due time, and dishonoured, they will not amount to payment. At present, such notes are seldom made, except by

country bankers, their use having been superseded by the introduction of *cheques*.

A *cheque* is a draft or order on a banker by a person who has money in the bank, directing him to pay a certain sum of money to the bearer, or to a person named in the cheque, which is signed by the drawer. It is the essential characteristic of a cheque that it should be payable to the "bearer," and not specifically to any one person. Cheques are immediately payable on presentment. They were, in 1858, by 21 V. c. 20, subject to a stamp duty of one penny, adhesive or impressed. To prevent their circulation as bills of exchange, they must be payable on demand to the bearer, and be drawn on a banker under fifteen miles of the place of issue. The place of issue, therefore, must be named, and they must bear date on the day of issue.

A *crossed cheque* is a cheque with the name of a particular banker written across the face of it, to whom for security it is payable, or it may be crossed simply "——— & Co.," leaving the holder to insert the name of the banker; in this case it is only paid through that banker. If presented by any other person, it is not paid without further inquiry. The judges in banco, in *Carlon* v. *Ireland* (Q. B. Jan. 1856), agreed that a crossed cheque continues a negotiable instrument payable "to bearer," and, therefore, that a person receiving a cheque crossed to be paid by one bank may substitute the name of another: a person is not bound to be more circumspect in taking a crossed cheque than one not crossed; he can only be called upon to show that he took it *bonâ fide*, and gave proper value for it.

To amend and fix the law relating to crossed cheques, the 19 & 20 V. c. 25, enacts that in "every case where a draft on any banker made payable to bearer or to order on demand bears across its face an addition, in written or stamped letters, of the name of any banker, or of the words 'and Company,' in full or abbreviated, either of such additions shall have the force of a direction to the bankers upon whom such draft is made that the same is to be paid only to or through some banker, and the same shall be payable only to or through some banker." The word "banker" includes any person, corporation, or joint-stock company, acting as such, s. 2.

The law was amended as to *cheques* in 1858, and by 21 and 22 V. c. 79, when a cheque on a banker payable to bearer or order on demand is issued crossed with the name of a banker, or with two transverse lines with the words "and Company," and any abbreviation thereof, such crossing shall be deemed a *material part of the cheque*, and shall not be obliterated, added to, or altered by any person (except as under) after the issuing thereof; and the banker upon whom drawn shall not pay such cheque to any other than the banker with whose name it is crossed, or if the same be crossed without banker's name, to any other than a banker. But by s. 2,

the *lawful holder* of a cheque uncrossed or crossed with "and Company," or its abbreviation, may cross the same with the name of a banker, and when the cheque is uncrossed, the lawful holder may cross with "Company" or "Co." with or without the name of a banker, and such crossing be deemed a material part of the cheque. Persons obliterating or altering a cheque with intent to defraud, guilty of felony. By s. 4, banker is not responsible for paying a cheque which does not plainly appear to have been crossed, or altered.

A cheque is negotiable like a bill of exchange, and vests in the assignee the same right of action against the assigner, in default of payment. A person having taken a cheque for a debt cannot sue for the debt till he has presented the cheque and payment of it has been refused. But a creditor is not bound to take a cheque on a banker transmitted to him as payment of his debt, and he may commence an action for his debt while the cheque is yet in his hands, *Hough* v. *May*, *N.* & *M.* 535.

There is no settled rule for the presentment of a cheque for payment, further than that it must be within a reasonable time, which, as observed by Lord Ellenborough, must be accommodated to other business and affairs of life, and the party is not bound to neglect every other transaction to present a cheque on the same day he receives it. But a banker, holding *sufficient funds* on account of his customer, is bound to pay his cheque within a reasonable time; and, if he fail so to do, he is liable to an action, 1 *B.* & *Adol.* 415.

The holder of a cheque on a banker is not bound to present it for payment till the day following that he receives it, 1 *N.* & *M.* 540; but it seems (9 *Man.* & *Gr.* 1061) that the time for presentment may be extended by the assent of the drawer, expressed or implied.

The drawer of a cheque continues liable, notwithstanding delay in the presentment of it, where things continue the same, and no damage has arisen from the delay, 3 *Ad.* & *E.* 52.

When the cheque is due on demand, and not payable at the place where received, it may be forwarded for payment by the next post.

Payment for a cheque before due is contrary to the usual course of business; and, therefore, when a banker paid a cheque a day before it bore date, which had been lost by the payee, he was liable to repay the amount to the loser, *Chitty on Bills*, 127.

When payment on a bill is made by the drawee giving a draft on a banker, it is not advisable to give up the bill till the draft is paid. If the holder of a draft on a banker receive payment thereof in the banker's notes instead of cash, and the banker fail, the drawer of the cheque will be discharged.

CHAPTER VIII.

Award or Arbitration.

An award is the arbitration and judgment of one or more persons at the request of two parties, who are at variance, for ending the matter in dispute without the delay and expense of an action at law or a suit in equity. The act of reference is termed a *submission;* the party to whom the reference is made an *arbitrator;* when the reference is made to more than one arbitrator, with a proviso that, in case they shall disagree, another shall decide, that other is called an *umpire.*

Arbitrations are of two kinds; first when there is a cause pending in court; and secondly when there is no cause pending. The submission in the former case is either by rule of court or judge's order before the trial, or by the order of *nisi prius* at the trial. In the second case, the submission is by agreement of the parties; which is either in writing or by parol, or by the positive direction of an act of parliament, as in the case of inclosure acts.

Experience having shown the utility of these references, especially in settling matters of account; in disputes between neighbours as to ancient lights and drains; cases between landlords and tenants upon dilapidations; matters of privacy arising between family connections; and executors' or trustees' accounts; all which are difficult and inconvenient to be adjusted in a court of law; it is enacted by 9 & 10 W. 3, c. 15, that those who desire to end any controversy, may agree that their submission of the suit to arbitration shall be made a rule of any court of record; and that, after such rule, the parties disobeying the award shall be liable to be punished for a contempt of the court, unless such award be set aside for corruption or misbehaviour, proved on oath to the court, within one term after the award is made.

By 3 & 4 W. 4, c. 42, s. 39, when submission to arbitration has been by rule of court, it is not revocable by either party without leave of the court. The court may also order the attendance of any witness, or the production of any document, and disobedience thereto is deemed a contempt of court. Arbitrators are empowered to administer an oath, and witnesses giving false evidence are subject to the penalties of perjury.

The death of either of the parties submitting to an award, or of one of the arbitrators, vacates the submission, unless it contain a stipulation to the contrary.

When the submission fixes no time for the making of an award, it shall be understood to be within a convenient time; and if, in such case, the parties request the arbitrators to make an award,

and they do not, a revocation afterwards will be no breach of the submission.

If, upon the trial of any issue of fact under 17 & 18 V. c. 125, s. 6, it appear to the judge that the question arising involves matter of account which cannot be conveniently tried before him, he may order such matter of account to be referred to an arbitrator appointed by the parties, or to an officer of the court, or, in country causes, to a judge of any county court, upon such terms as to costs as the judge thinks reasonable. Application to set aside any award under reference must be made within seven days of the term next following the publication of the award to the parties, whether made in vacation or term, s. 11.

Every one whom the law supposes free, and capable of judging, may be an arbitrator or umpire; but an infant, a married woman, or a person attainted of treason or felony, is disqualified.

The nomination of the umpire is either made by the parties themselves, at the time of their submission, or left at the discretion of the arbitrators; but it is not unusual for the arbitrators to nominate the umpire before they proceed to consider the subject referred to them.

Time and place for investigating the matter being appointed, the parties must attend the arbitrators, either in person or by attorney, with their witnesses and documents. The arbitrators may also, if they think proper, examine the parties themselves, and call for any other information.

The arbitrators have a jurisdiction over the *costs* of the action, as well as over the matter in controversy; and in case of a reference at *nisi prius*, they may refer the costs to be taxed by the proper officer of the court, but by no one else.

As a reference to arbitration is in the nature of a trial, and as the award is the judgment, it ought to be final, certain, and conclusive, so as to leave nothing open to future dispute or litigation.

An award must be made in *writing*, signed and sealed by the arbitrators, and the execution properly witnessed; it may, however, be made by *parol*, if it is so expressly provided in the submission.

An award, in writing, and under seal, need not have a deed stamp, unless delivered as a deed; but, being only delivered as an award, it is sufficient to have the award stamp.

CHAPTER IX.

Contracts.

MR. COMYN defines a contract an agreement or mutual bargain between two contracting parties entered into either *verbally*, that is, by word of mouth only, or in *writing*. When reduced into writing,

it is either subscribed with the hands and seals of both the contracting parties, or merely with one or both their signatures. Such contracts as are reduced into writing, under hand and seal, are technically called *deeds* or *specialties;* and those which are merely by parol, or in writing not under seal, are denominated *simple* contracts. The Statute of Frauds requires simple contracts to a certain amount, and under certain circumstances, in order to be valid, to be in *writing;* but, though written, they still continue, like all other contracts not under seal, to be considered simple contracts.

The contracts mostly in use in commercial affairs are simple or parol engagements. The chief legal distinction between simple contracts and contracts by specialty, or deed, it will be proper to explain.

1. In support of an action on simple contract, the creditor must prove it was founded on a *sufficient consideration*, but in a proceeding on a contract by deed, the want of consideration forms no defence to an action. 2. A deed is not effected by the Statute of Limitations, which renders any bill of exchange, promissory note, or other simple contract, void at the expiration of six years. 3. The obligation of a deed can only be avoided by a release *under seal*, and not by parol. 4. And lastly, as a special contract is considered a more deliberate and solemn engagement than by parol, the party bound thereby is not allowed to plead against any stipulation it contains that it was executed with a different *intent* to what the terms of the deed itself import.

Having explained the relative obligations of *simple* and *special* contracts, the different subjects of sale and contract may be treated in the following order :—

1. *Sale and Conveyance of Estates.*
2. *Purchase and Sale of Goods.*
3. *Sale of Horses.*
4. *Sale or Return.*
5. *Hiring and Borrowing.*
6. *Warranty of Goods.*
7. *Bill of Sale.*
8. *Guarantee.*
9. *Stoppage in transitu.*
10. *Contracts to Marry.*
11. *Avoidance of Contract.*
12. *Payment.*
13. *Stamping of Contracts.*

I. SALE AND CONVEYANCE OF ESTATES.

As a general principle, the law affords no redress for *oversights* omitted in the purchase of estates, *which might* have been aided by ordinary judgment *and vigilance.* But if the vendor

knowingly conceal *latent* defects, either as regards the estate
title, he cannot compel the execution of the contract, thou
estate be sold expressly subject to all its faults.

A conveyance obtained for an inadequate consideration, fro
not conscious of his right, by a person who had notice o
right, will be set aside, though no actual fraud is proved.
there be no fraud in the transaction, mere inadequacy of
would not be deemed sufficient, even in equity, to vacate
tract, 10 *Ves.* 292.

If it be falsely asserted that a valuation has been made
estate at a higher price than really was the case, the purch
not bound to complete the purchase, 3 *Atk.* 383. So if th
ticulars of the sale of a house describe it to be in good
when it is not so, the purchaser need not fulfil the purchase
there be time to complete the repairs before his right of pos
commences. A false affirmation of the amount of rent will
the purchaser, 2 *Ray.* 1118.

From the moment of sale, the vendee becomes the virtual
and, consequently, from that time, entitled to any profit, o
ject to any loss, which may subsequently accrue from the
And, on the other hand, the vendor is entitled to *interest*
purchase-money from the time of the bargain to that of pay
Suy. Vend. 479.

In trust estates, the purchaser is bound to see to the due
cation of the purchase-money according to the terms of the
unless expressly released from that obligation by the terms
trust.

Various persons are disqualified from the purchase of es
as trustees to preserve contingent remainders; agent, co
sioners of bankrupts, assignees of bankrupts, solicitors to th
mission, auctioneers, and, lastly, creditors who have been con
as to the mode of sale.

Contracts for the sale or purchase of estates must be in w
signed by the parties, and contain the terms of agreement
as the consideration to be given, the property sold, and the
of the contractors. Where, however, the party resisting the
ment of the contract admits the agreement, or has acted f
lently, equity will enforce the contract, though it be
verbal.

In the session of 1845, important alterations were made
law of real property, in the nature of the interests sub
therein, and in the forms and mode of their conveyance.
details are legal and technical, but we shall endeavour to
the substance of the new statutes.

The 8 & 9 V. c. 106, enacts that all corporeal tenemen
hereditaments shall, as regards the conveyance of the imm
freehold, be deemed to lie in grant as well as in livery; ever
to be chargeable with a stamp duty. All feoffments (other

eoffment made under a custom by an infant) and partitions, leases, assignments, and surrenders of any property not being copyhold, to be by deed. Such feoffments are not to operate by wrong, nor any exchanges or partitions to imply any condition in law, nor are the words "give" or "grant" in any deed to imply any condition beyond what it may legally express. Section 5 empowers any one to take an immediate estate or interest in any tenement or interest under an indenture, and any deed purporting to be an indenture is to take an effect as such. Contingent and other like interests, also rights of entry, whether immediate or future, are made alienable by deed, but no such disposition to defeat or enlarge a trust estate; and every such disposition by married women is to be conformable to the 3 & 4 W. 4, c. 74, and 4 & 5 W. 4, c. 92. Married women may disclaim estates or interests by deed. A contingent remainder existing at any time after the 31st Dec., 1844, shall be, and if created before the passing of this act shall be deemed to have been, capable of taking effect, notwithstanding the determination by forfeiture, surrender, or merger of any preceding estate of freehold, in the same manner, in all respects, as if such determination had not happened. When the reversion expectant on a lease, made either before or after the passing of this act, of any tenements or hereditaments, of any tenure, shall, after Oct. 1st, 1845, be surrendered or merge the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments, it shall, to the extent and for the purpose of preserving such incidents to and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.

The 8 & 9 V. c. 119, regulates the conveyance of real property. In the schedule to the act, two forms of conveyance are given; and the first section enacts, that the short form of about 150 words shall be taken to have the same effect as the long one of more than ten times the length. Such deed to be held to convey all houses and buildings whatever, orchards, commons, trees, fences, ways, waters, privileges, and all appurtenances pertaining to the land therein comprised, together with the reversions or remainders, and all the estate both in law and equity of the granter. The stamp duty to be the same as on a lease or bargain and sale for a year. In taxing a bill for executing such a deed, the remuneration to have reference, not to the length of the deed, but to the skill and labour required and responsibility incurred.

The 8 & 9 V. c. 124, is almost identical with the preceding, substituting leases for deeds, and containing in two schedules the forms in which the leases are to be drawn up.

These acts do not extend to Scotland.

II. PURCHASE AND SALE OF GOODS.

By the Statute of Frauds, 29 C. 2, c. 3, no contract for the sale of goods to the value of £10 or upwards is valid, unless the buyer actually receive and accept part of the goods sold, or unless he give *something* by way of *earnest*, to bind the bargain, or in part of payment; or unless some note or memorandum in writing be made and signed by the party, or his agent, who is to be charged with the contract.

With regard to goods *under* the value of £10, no contract or agreement is binding, unless the goods are to be delivered *within a year*, or unless the contract be made in writing, signed by the party or his agent.

The delivery of a penny or a glove is sufficient *earnest* within the statute: the acceptance of the key of the warehouse in which the goods are deposited; the payment of warehouse rent; the directing them to be conveyed by a particular carrier; or the re-sale of them to a third person, are all an affirmance of the bargain.

The note or memorandum of a bargain for the price of £10 or upwards, must state the *price* for which the goods were sold, 5 *B.* & *C.* 583, *T. T.* 1826.

The provisions of the Statute of Frauds having been held not to extend to certain *executory contracts*, this defect is remedied by 9 G. 4, c. 14, by which it is provided that the 29 C. 2, c. 3, shall be extended to all contracts for the sale of goods of the value of £10 and upwards, notwithstanding the goods may be intended to be delivered at some *future time*, or may not at the time of such contract be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery.

Where no act remains to be done by the vendor, as counting, weighing, or measuring, the moment the bargain is struck the property of the goods is vested in the vendee, and remains at his risk. So, if a horse die in the *interval* of sale and delivery, the conditions of the statute having been complied with, the vendor is entitled to his money, though no actual change of property has taken place.

In some cases property may be transferred by sale, though the vendor have none at all in the goods. The general rule of law is, that all sales and contracts for anything vendible in fairs or open market, not only bind the parties, but all those having any right or property therein. Open market in the country is only held in certain towns, in a particular spot, and on special days, by charter or prescription. But in London, every day except Sunday is market-day, and every shop in which

goods are publicly exposed to sale is open market, for such goods only as the owner professes to trade in. Pawnbrokers in London, and within two miles thereof, are exempt from this protection; and any goods wrongfully taken to them may be claimed by the owner.

By the Mercantile Law Act, 19 & 20 V. c. 97, no writ of *fieri facias* or other writ of execution, and no writ of attachment against the goods of a debtor, will prejudice the title to such goods acquired by any person *bonâ fide*, and for a valuable consideration, before the actual seizure or attachment thereof by virtue of such writ; provided the party had no notice of the writ or attachment having been delivered to, and having remained unexecuted in the hands of, the sheriff.

III. SALE OF HORSES.

The property in horses is not easily altered by sale, without the express consent of the owner; for a purchaser gains no property in a horse that has been *stolen*, unless it has been bought in a *fair* or *open* market, according to the directions of the statutes. By 2 & 3 Ph. & M. c. 7, and 31 Eliz. c. 12, the keeper of every fair or market is bound to appoint a certain open place for the sale of horses, and one or more persons to take toll there, and keep the place from ten in the forenoon till sunset. The owner's property in the horse *stolen* is not altered by sale in a fair, unless it be *openly* ridden, led, walked, or kept standing for one hour at least, and has been registered, for which the buyer pays 1*d*. Sellers of horses in fairs or markets must be known to the toll-taker, or other person, who will testify his knowledge of them, which is registered. Sales made otherwise are void. The owner of a horse stolen, notwithstanding the *legal sale*, may redeem the same on the payment or tender of the price within six months after it is stolen.

A warranty of *soundness* in a horse may be defined, in an enlarged sense, as an assurance from constitutional defects; but, in its practical import, is construed so as to exclude every defect by which the animal is rendered less fit for present use and enjoyment, 1 *Stark.* 127. A defect arising from a temporary injury capable of being speedily cured, and not interfering with such enjoyment, the horse is not, on that account, to be held *unsound;* still less if the purchaser be informed of it, and admits the exception into the terms of contract, 2 *Esp.* 673.

With respect to *exchanges*, there is no difference between sales and exchanges, but a delivery on one or both sides is essential to establish the contract, 3 *Salk.* 147.

The agreement of the sale of horses has been held to be an agreement "relating to the sale of goods" within the Statute of Frauds; therefore, a written *receipt for the* price, containing the

warranty, or other conditions of sale, is admissible in evidence, stamped as a common receipt-stamp, without an agreement-stamp, and is the usual mode in which the contract is made and proved, *Skrine* v. *Elmore*, 2 *Camp.* 407.

IV. SALE OR RETURN.

When goods are sold upon *sale* or *return*, no absolute property is vested in the conditional vendee; and the sale of them contrary to the price or terms agreed upon, subjects him to action. But though, while the goods remain unsold in the hands of such conditional vendee, no absolute property vests in him, yet, under the 6 G. 4, c. 16, s. 72, they would doubtless pass to the assignees as goods in his possession, order, or disposal; nor would any agreement between the parties protect the goods from the operation of the statute.

V. HIRING AND BORROWING.

These are contracts by which a qualified property is transferred to the *hirer* or *borrower*: the difference is, that *hiring* is always for a price or recompense; *borrowing* is merely gratuitous. In both cases the law is the same. They are both contracts whereby a transient property is transferred, for a particular time, or use, on condition of restoring the goods so hired or borrowed, as soon as the time is expired, or use performed, together with the price or recompense (in case of hiring), either expressly stipulated or left to be implied by law, according to the value of the service. Thus, if a man hire or borrow a horse for a month, he has a qualified property therein during that period; on the expiration of which his qualified property determines, and the owner becomes, in case of hiring, entitled to the price for which the horse was hired.

In all cases of hiring and borrowing, there is an implied condition that the thing hired or borrowed shall not be abused or improperly treated, so that it may be returned in as good condition as it was received.

VI. WARRANTY OF GOODS.

In all cases of *express* warranty, if the warranty prove false, or the goods are in any respect different from what the vendor represents them to be, the buyer is entitled to compensation, or he may return them. But a *general* warranty does not extend to guard against defects which are obvious to ordinary circumspection, or where the false representation of the vendor is known to the vendee: as, if a horse with a *visible* defect be warranted perfect, or the like, the vendee has no remedy.

Neither does the law, upon a sale of goods by sample, with a

warranty that the bulk of the commodity answers the sample, raise an implied warranty that the commodity should be marketable; therefore, if there be a latent defect then existing in them, *unknown* to the seller, and without fraud on his part, he is not answerable.

But a sale of goods by sample is such a warranty that, if the bulk be inferior to the sample, the purchaser is not bound to accept or pay for the goods.

Warranty must be upon the sale; if it be made after, it must be reduced to writing, otherwise it will not be binding on the vendor.

VII. BILL OF SALE.

This is a contract, under hand and seal, whereby a man transfers the interest he has in goods to another; such an instrument is binding against the party who executes it, whether it were for valuable consideration or not; but it may be fraudulent and void against creditors, and in some cases an act of bankruptcy.

When judgment has been obtained for any debt or damage, all contracts for the sale or purchase of goods, though for a valuable consideration, are void from the delivery of the writ to the sheriff; and those persons obtaining such judgment have a lien upon the property of him against whom it is given, so as to defeat any intermediate disposition of it between the delivery of the writ and the execution of the judgment. A *bonâ fide* sale of goods in open market, to an innocent vendee, without notice of the execution, is not, however, subject to the lien of a third person, under the judgment. So a bill of sale of goods made for a valuable consideration, with the knowledge and consent of the creditors, is valid against them, though unaccompanied with possession.

A bill of sale is sometimes given with a condition for resuming the goods at a certain period on repayment of the money advanced; but it is a dangerous method of obtaining accommodation, and should be cautiously adopted.

The transactions to which bills of sale are most applicable are, sales of fixtures and furniture in a house; of the stock of a shop; of the good-will of a business; of an office, or the like. But their most important use is in the transfer of property in ships, which, being held in shares, cannot, in general, be delivered over on each change of part ownership.

Frauds are frequently committed upon creditors by *secret bills of sale of personal chattels*, whereby persons are enabled to keep up the appearance of being in good circumstances and possessed of property, and the grantees or holders of such bills of sale have the power of taking possession of the property of such persons, to the exclusion of the rest of the creditors. For the remedy of such collusive practices, the 17 & 18 V. c. 36, enacts that every bill of

sale shall be void, unless the same, or a copy thereof, and of every schedule annexed, attestation of execution, together with an affidavit of the time of making, and a description of the residence and occupation of the person giving the same, be filed within twenty-one days after the making of such bill, with the clerk of the docquets and judgments in the Court of Queen's Bench, in like manner as a warrant of attorney in any personal action given by a trader is now required to be filed.

By s. 2, in every bill of sale, if subject to any defeasance, condition, or declaration of trust, the same must be written on the same paper or parchment as the bill of sale. Officers of court to keep a book containing particulars of each bill of sale, and a search to be permitted on the payment of 1*s*. Officer entitled to a fee of 1*s*. for filing bill of sale, and to account for the same. Office copies or extracts to be given on paying as for copies of judgments, ss. 3, 4.

The Bill of Sale Act is amended by 29 & 30 V. c. 96, and the filing of a bill or copy is made the equivalent term for a registration of a bill of sale under the new act of 1866. The registration of a bill of sale under the act of 1854, during the subsistence of such security, to be renewed once every five years from the day of registration; or, if not so renewed, it ceases to be of effect during the interval, subject to the provision that, where the five years have expired before January 1, 1867, the bill is made valid if the registration be renewed prior to that date. By s. 5, registration to be renewed by filing in the office of the masters of the Court of Queen's Bench an affidavit, stating the date of the bill, the names, residences, and occupations of the parties thereto, and also that it is still a subsisting security. Affidavit is then numbered by the masters, who re-number the original "bill of sale or copy filed in the office with a similar number." Affidavit to bear a 5*s*. stamp, and office copies supplied as under the 17 & 18 V. c. 36. By s. 7, masters to keep one book only, containing the particulars of each bill of sale and affidavit. Search allowed to any one at reasonable times against one person on payment of one shilling fee by a common law stamp. Office copies of affidavit to be supplied at the like rate as office copies under the principal act.

VIII. GUARANTEE.

A guarantee is an undertaking to answer for the failure or default of another. The Statute of Frauds provides that no person shall be liable on any special promise to answer for the debt, default, or miscarriage, of another person, unless a written agreement, or some memorandum in writing for such promise, shall be signed by the party making the promise, or some other person lawfully authorized by him for the purpose. In the construction of a gua-

rantee, it is a general rule that the surety shall not be bound beyond the extent of the express words of the engagement into which he has entered.

By the 19 & 20 V. c. 97, no special promise made to answer for the debt, default, or miscarriage of another, is deemed invalid to support an action, by reason that the consideration for such promise does not appear in writing, or by necessary inference from a written document.

By the Mercantile Law Amendment Act, the 19 & 20 V. c. 60, s. 4, the promise or guarantee to or for a *firm* will cease upon a change in the members of a firm, unless it appear to be the intention of the parties that, by express stipulation or implication, the guarantee shall be binding notwithstanding the change in the firm.

By s. 5. every person who is surety for the debt or duty of another, who discharges his liability, is entitled to the assignment of all securities held by creditors.

IX. STOPPAGE IN TRANSITU.

When goods have been consigned upon credit, and the consignee has become a bankrupt or insolvent before the delivery of the goods, the law, in order to prevent the loss that would happen to the consignor by the delivery of them, permits him, in many cases, to resume the possession, by countermanding the delivery, and before or at their arrival at the place of destination, to cause them to be delivered to himself or agent. The exercise of this right is termed a *stoppage in transitu*, or *in passage*, and embraces two principal considerations :—1. The circumstances under which goods are deemed to be *in transitu*. 2. By whom this right may be exercised.

With respect to the *first* consideration, it is a general rule that the passage of goods continues in all cases till there has been an actual delivery to the vendee ; therefore, goods continue liable to the vendor's right of stoppage, not only while they remain in possession of the carrier, whether by land or water, but also in any place connected with the transmission and delivery of them to the consignee. So, if goods consigned are delivered to a wharfinger or packer, and he receive them on the part of the vendee, to be forwarded to him accordingly, on the insolvency of the vendee they are subject to be stopped by the consignor in the hands of the wharfinger or packer, even though the latter should have been appointed by the vendee.

The payment of part price of the goods does not affect the vendor's right of stoppage, for part payment only diminishes the vendor's lien to that amount on the goods detained. But where part of the goods sold by an entire contract has come into actual possession, the vendor's *right to countermand* is wholly at an end, and

cannot be exercised over the residue, which may not have been delivered, 2 *Hen. Bl.* 504. Neither has the vendor any right of stoppage if the vendee has exercised any right of ownership over them; as by tasting, sampling, paying warehouse rent, though at a place short of their ultimate destination, 4 *Esp.* 82. Even if after goods are sold, they remain in the warehouse of the vendor, and he receive warehouse rent for them, this amounts to such a delivery of the goods to the vendee as to put an end to the vendor's right to stop *in transitu*.

By whom the right of stoppage may be exercised.

This right can only be exercised where the relation of a vendor and vendee subsists between the consignor and consignee; it does not belong to a person who has only a *lien* upon the goods, without any property in them. A carrier, to whom the balance of a general account is due, can only detain for the carriage of the particular goods in his possession. Nor is a mere surety of the price of the goods such a vendor as can exercise the right of stoppage *in transitu*, even though he may be entitled to a commission on the amount of the goods for which he may have been security. But where a correspondent abroad, in pursuance of orders from a merchant in this country, purchases goods on *his own* credit, and merely takes a commission on the price, in case of the insolvency of the consignee, he is considered the vendor for stopping the goods *in transitu*; for there is no privity between the original owner and the insolvent.

It is not necessary that the vendor, to exercise the right of stoppage, should *actually* take possession of the property consigned by corporal touch; he may put in his claim to the goods *in transitu* either verbally or in writing, and it will be equivalent in law to an actual stoppage, provided it be made before the transit has expired.

X. CONTRACTS TO MARRY.

If a man and woman, being unmarried, mutually promise to marry each other, but afterwards one of the parties marry another person, an action will lie for the breach of the contract.

If an infant and person of *full age* mutually promise to marry, the infant, though not bound by the promise, may, notwithstanding, maintain an action for breach of promise by the adult.

A promise by a man to pay a woman a sum of money if he shall marry anybody else, is considered as a *restraint of marriage*, and therefore void. So, in the case of *Hartley* v. *Rice*, which was an action upon a wagering contract for fifty guineas, that the plaintiff would not marry within six years, this was held to be in restraint of marriage, and therefore void; no circumstance appearing to show that such restraint was prudent and proper in the particular case.

The Statute of Frauds does not require that mutual promises to marry should be in writing. But a parol agreement to pay money or make a settlement in *consideration of marriage*, if not reduced to writing, is void.

XI. AVOIDANCE OF CONTRACT.

After bargain for the sale of goods, if the vendee does not come and pay for them, and take them away in a reasonable time after request, the vendor may elect to consider the contract rescinded, and resell the goods.

Generally, if either vendor or vendee neglect to fulfil the conditions of the sale, the other is at liberty to avoid the bargain.

A contract for the sale of goods may also be avoided by the *Statute of Limitations*, the 21 Jac. 1, c. 16, which fixes the period of six years as the term beyond which a plaintiff cannot lay his cause of action. The general provisions of this act, and of the 3 & 4 W. 4, c. 27, have been stated at pages 69 & 70; we shall only here observe, the courts have manifested great repugnance to a plea under this act, and it is held the statute does not extinguish the *right of action*, but only suspends the remedy, and this suspension is removed by a subsequent promise or engagement. But by 9 G. 4, c. 14, for a subsequent promise to be binding, and to take the case out of the statute, it is necessary the promise should be in *writing*, signed by the party chargeable therewith.

From the Statute of Limitations are excepted all persons under age, married women, persons insane, in prison, or abroad; and the limitations of the statute commence only from the time when their respective impediments or disabilities have been removed.

Although a good and sufficient consideration is necessary to the validity of a simple contract, yet a contract may be avoided when founded on a legal consideration, if the execution of the engagement involve the violation of any public law or statute. Thus a contract could not be enforced which is contrary to the act for the prevention of stock-jobbing, or in violation of the stamp, excise, or navigation laws. Neither could an action be sustained on a contract contrary to public morals, though a consideration has been given or received. Therefore the value of prints on obscene and immoral subjects is not recoverable, 4 *Esp.* 27. Nor could the value of articles of dress, or of board and lodging, furnished to a prostitute to enable her to follow her vocation, be recovered. *Camp.* 358, and *Pearce* v. *Brooks*, *L. R.* 1 *Ex.* 213.

XII. PAYMENT.

In some branches of trade, custom has established a general usage as to the period of credit *upon sales of goods*, and, where no specific stipulation *is made to the contrary, this customary* credit is

as much a part of the contract as if expressly agreed upon ; the law implying that all persons deal according to the general usage, unless the contrary appear.

Where no such usage prevails, and no time of payment is specified in the contract of sale, the money is demandable immediately upon the delivery of the goods.

If the vendor stipulate to deliver certain goods within a limited time, he cannot demand payment until the *whole* of the goods are delivered.

A person contracting to deliver a certain quantity of goods, and failing to deliver the *whole* quantity agreed upon, may recover for the part delivered and accepted by the buyer. The buyer can only be exonerated from payment by refusing to *accept a part;* for, if he accept and take the benefit of part, no protest at the time of acceptance will relieve him from liability of payment, *Oxenden* v. *Wetherell*, Easter Term, 1829.

With respect to *interest*, it is determined that interest is not allowable on demand for goods sold and delivered, unless where there is a specific agreement for that purpose ; as by a bill of exchange, promissory note, or an express promise to pay interest ; then the vendor is entitled to interest from the time specified.

So, when, from the usage of a particular trade, the intention of the parties that a book-debt shall bear interest can be collected, interest will be allowed.

By 9 G. 4, c. 14, s. 3, no endorsement or memorandum of any payment, upon any promissory *note*, *bill*, *or other writing*, by the party to whom the payment is made, shall be deemed sufficient proof of such payment, so as to take the case out of the Statute of Limitations.

XIII. STAMPING OF CONTRACTS.

A written instrument which requires a stamp cannot be admitted in evidence unless it be *duly stamped ;* and no parol evidence will be received of its contents. If, therefore, the instrument produced is the only *legal* proof of the transaction, and that cannot be admitted for want of a proper stamp, the transaction cannot be proved at all. But it may happen, in a variety of cases, that the transaction is capable of being proved by other evidence, besides the written instrument ; and the objection arising from the Stamp Act may be avoided by resorting to that of other species of proof.

It appears, however, from a decision in the Exchequer, that a *deed* may be valid without a stamp of the proper denomination, provided it has a stamp proportioned to the consideration *expressed* in the deed, and though that consideration proved not to be the true one, 13 *Price*, 455 *E. T.* 1824. But, on the other hand, persons are liable to a heavy penalty in not setting forth the *full* purchase or consideration money.

The Common Law Procedure Act, the 17 & 18 V. c. 125, makes provision for stamping documents at the trial of a cause. By s. 28, upon the production of any document as evidence, it is made the duty of the officer of the court, whose duty it is to read such document, to call the attention of the judge to any omission or insufficiency of the stamp; and the document, if unstamped or not sufficiently stamped, will not be received in evidence, unless the whole, or the deficiency of the stamp duty, and the penalty required by statute, and an additional £1, be paid.

CHAPTER X.

Assumpsit.

Assumpsit, from the Latin *assumo*, is an *implied* contract, by which a man assumes or takes upon him to perform or pay anything to another, and to which he is bound upon the principles of equity and the just construction of law.

1. If I employ a person to transact any business for me, or perform any work, the law implies that I undertook or assumed to pay him so much as his labour deserved. And if I neglect to make him amends, he has a remedy for this injury by bringing his action on the case; in which he is at liberty to suggest that I promised to pay him so much as he reasonably deserved, and then to aver that his trouble was really worth such a sum, which valuation is submitted to the determination of a jury.

2. If one take up goods or wares of a tradesman, without expressly agreeing for the price, there is an implied understanding that the real value of the goods shall be paid, and an action may be brought accordingly.

3. Another implied undertaking is, when one has received money belonging to another, without a consideration given on the receiver's part; for the law construes the money received for the use of the owner only, and implies that the person so receiving it undertook to account for it to the owner. And if he unjustly detain it, an action lies against him, and damages may be recovered. This is an extensive and beneficial remedy, applicable almost to every case where a defendant has received what, in equity and fairness, he ought to refund. It lies for money paid by mistake, or on a consideration which happens to fail, or through imposition, extortion, or oppression, or where any undue advantage is taken of the plaintiff's situation.

4. When a person has laid out and expended his own money for the use of another, at his request, the law implies a promise of payment, and an action will lie *on this undertaking*. On this principle it is established *that a surety in a bond*, who pays the

debt of his principal, may recover it by action on the assumpsit, for so much advanced for the use of the principal. But an action will not lie for money paid, when the money has been paid *against the express consent* of the party for whose use it is supposed to have been paid. Neither can money be recovered back when paid for carrying on an *unlawful* undertaking, as an unlicensed theatre, 10 *Bing.* 107.

5. Upon a stated account between two merchants or other persons, the law implies that he against whom the balance appears has engaged to pay it to the other, though there be not any actual promise. Actions, however, to compel a person to bring in and settle his account are now seldom used; the most effectual way to settle these matters is to file a bill in equity, when a discovery may be had on the *defendant's oath* without relying merely on the evidence which the plaintiff may be able to produce; though, when an account is once settled, nothing is more common than an action on the assumpsit to pay the balance.

6. The last class of implied contracts arises upon the supposition that every one who undertakes any office, employment, trust, or duty, contracts, with those who employ or entrust him, to perform it with integrity, diligence, and skill. And if, by the want of either of these qualities, any injury accrues to individuals, they have their remedy and damages by a special action on the case. A few instances will suffice.

If a public officer be guilty of a neglect of duty, or a sheriff or jailor suffer a prisoner in custody for debt to escape, or if an attorney betray or wilfully neglect the cause of his client, he is liable for damages.

With an innkeeper, there is an implied contract to secure his guest's goods in his inn; with a common carrier to be answerable for the goods he carries; with a common farrier, that he shoes a horse well, without laming him; with a tailor, shoemaker, or other workman, that he performs his business in a workmanlike manner; in which, if they fail, an action on the case lies to recover damages for such breach of their general undertakings. So, too, a surveyor being employed to survey and value premises, upon the security of which money is about to be advanced; if he, through ignorance or negligence, represent the value of the security to be greater than it is, by which his employer is deceived, he is liable to an action damages.

But if a person be employed to perform any of these offices, whose common profession or business it is not, the law implies no such general undertaking: in order to charge *him* with damages, a special agreement is necessary.

If any one cheat me with false cards or dice, or by false weights and measures, or by selling me one commodity for another, an action lies for damages upon the contract: since the law implies that every transaction ought to be fair and honest.

In contracts, likewise, in sales, it is constantly understood that the seller undertakes that the commodity is his own. In contracts for provisions, it is implied that they are *wholesome:* otherwise, in either case, an action lies for damages.

CHAPTER XI.

Merchant-Shipping and Navigation.

1. *Navigation Laws.*
2. *Discipline, Wages, and Health of Seamen.*
3. *Board of Trade, Ownership, Registry.*
4. *Passenger Steamers.*
5. *Wreck and Salvage.*
6. *Charter-Party.*
7. *Bill of Lading.*
8. *Freight.*
9. *Bottomry and Respondentia.*
10. *Average.*
11. *Pilotage.*
12. *Merchant Shipping Act*, 1873.

I. NAVIGATION LAWS.

The general aim of these laws has been to encourage British shipping, by securing the carrying trade of the country, both foreign and coastwise, to British-built ships, owned and navigated by British subjects. They are of ancient date; but the policy of them was most directly resorted to and matured to counteract the maritime ascendany of the Dutch, by the famous statute of the Long Parliament in 1651, afterwards confirmed in 1660 by the Navigation Act of 12 Car. 2, c. 18. In this act it is provided that no merchandise, either of Asia, Africa, or America, shall be imported into England except in British-built ships, navigated by an English commander, and manned to the extent of three-fourths of the crew by Englishmen; and that certain enumerated articles of European merchandise, embracing all the bulky and chief products of the Continent, as well as all Turkish and Russian goods, should not be imported in foreign ships, except such as should be brought directly from the country or place of growth, or manufacture, in ships belonging to such country or place. Besides these exclusive privileges granted to English shipping, the object intended was further sought to be gained by the *imposition of discriminative duties*, so that the *enumerated goods which might* be imported in

foreign ships in Europe were, in that case, more highly taxed than if imported in our own vessels.

A policy so selfish could hardly fail to encourage, if not to provoke, imitation; and the United States of America, after achieving their independence, promptly followed the example of the mother country, by passing a *Navigation Act*. But experience soon showed that a Navigation Act, if a national benefit at all, is only one-sided, and that two conflicting acts are mutually detrimental; compelling the ships respectively of the competing States in the outgoing voyage to sail in ballast. Negotiations ensued, and a treaty was concluded in 1815, guaranteed by an act of parliament, which, for the first time, allowed of a deviation from the strictness of our protective enactments. By this treaty the ships of the two countries were placed reciprocally on the same footing in the ports of England and the United States, and all discriminative duties chargeable upon the goods thus conveyed were mutually repealed.

A few years later, further modifications of our exclusive system had become unavoidable, and five acts were passed, the 3 G. 4, c. 41 to c. 45, which greatly mitigated our shipping laws. From various causes foreign countries had up to this time generally submitted to the discriminative duties imposed upon their vessels in our ports without retaliation. But it now appeared that the imposition of preference duties was a game that two or more States might play at, and that the forbearance of our neighbours was no longer to be calculated upon. In 1823, Prussia notified that, until an alteration of our system was made in favour of her vessels, similiar heavy duties would be imposed upon British ships that should enter any of her ports; and it was observed that a corresponding movement would have followed in other countries. Our merchants, in consequence, became anxious for the removal of the English discriminitive duties; and with this view the Reciprocity Acts, the 4 G. 4, c. 79, and 5 G. 4, c. 1, were passed. These statutes authorized the crown to permit the importation and exportation of commodities in foreign vessels, at the same duties as were chargeable on British vessels, in favour of all such countries as should not levy discriminative duties on British vessels. Under these acts reciprocity treaties were concluded with the chief German States, with the States of South America, and with France, Austria, Holland, and Greece.

From this legislative retrospect it is manifest, that whatever might be the primary policy of the Navigation Laws, or their influence on the maritime progress of the country, the relaxation of them had become expedient to avert a hurtful retaliatory course in other nations. As the greatest of commercial countries, as having more ships to employ, and more commodities to exchange, England doubtless appeared more than any other country interested in their peaceable and unrestricted intercourse. By these comprehensive views the Legislature seems to have been influenced in the gradual

abandonment of the Navigation Laws, especially by the acts by which British ships ceased to be required to be manned by a certain proportion of British seamen, and by the opening of the coasting trade to foreign vessels.

It is by 16 & 17 V. c. 131, s. 31, that so much of a former act as requires every British ship to be navigated by a master who is a British subject, and the whole or a certain proportion of her crew to be British seamen, is repealed.

By 16 & 17 V. c. 107, no goods or passengers can be carried coastwise from one port of the United Kingdom to another, nor to or from the Isle of Man, or the Channel Islands, except in *British ships*. These restrictive enactments on foreign vessels have been repealed by 17 V. c. 5, subject to the Customs Act, 1853, and the right of exercising retaliatory restrictions.

II. DISCIPLINE, WAGES, AND HEALTH OF SEAMEN.

The Merchant Shipping Act of 1854, the 17 & 18 V. c. 104, amends and consolidates the entire statute law relative to merchant shipping, divided into eleven parts, comprising in the whole 548 clauses. The first part relates to the Board of Trade and its general functions. Part 2 to British ships, their ownership, measurement, and registry; and part 3, to masters and seamen; part 4, to safety and prevention of accidents; part 5, to pilotage; part 6, to light-houses; part 7, to mercantile marine fund; part 8, to wrecks, casualties, and salvage; part 9, to the liabilities of ship-owners; part 10, to legal procedure; and part 11, to miscellaneous matters. It is only the third part relative to masters and seamen, which it will be necessary to include in the present section.

Any master of, or any seaman or apprentice belonging to, any British ship, who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction, or serious damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanour, s. 239.

The Board of Trade may grant to such persons as it thinks fit licenses to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as such board thinks proper. Penalty for acting without a license, unless it be the owner, master, or mate, not exceeding £20, s. 146.

With respect to the *legal rights* of seamen, it is provided that a seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work, or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any rate which he may have or obtain in the nature of salvage, shall be wholly inoperative.

No right of wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck, or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo, and stores, shall bar his claim.

In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage, such seaman shall be entitled to wages for the time of service prior to such termination.

No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

The master or owner of every ship shall pay to every seaman his wages within the respective periods following: that is to say, in the case of a home-trade ship within two days after the termination of the agreement, or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects

ıses to make payment in manner aforesaid, without sufficient
shall pay to the seaman a sum not exceeding the amount of
ys' pay for each of the days, not exceeding ten days, during
payment is delayed beyond the respective periods aforesaid,
ch sum shall be recoverable as wages.

seaman or apprentice, or any person duly authorized on his
may sue in a summary manner before any two justices of
ace acting in or near to the place at which the service has
ated, or at which the seaman or apprentice has been dis-
d, or at which any person upon whom the claim is made is
des, or in *Scotland* either before any such justices or before
eriff of the county within which any such place is situated,
amount of wages due to such seaman or apprentice, not
ing fifty pounds over and above the costs of any proceeding
recovery thereof, so soon as the same becomes payable; and
rder made by such justices or sheriff in the matter shall be
s. 181-187.

never, during the absence of any seaman on a voyage, his
hildren, and step-children, or any of them, become or
s chargeable to any union or parish in the United Kingdom,
nion or parish shall be entitled to be reimbursed, out of the
of such seaman earned during such voyage, any sums pro-
xpended during his absence in the maintenance of his said
n or any of them, so that such sums do not exceed a speci-
portion of his wages, s. 192.

seaman may leave his ship for the purpose of forthwith
g into the naval service of her Majesty, and such leaving
p shall not be deemed a desertion therefrom, and shall not
him liable to any punishment or forfeiture whatever; and
ulations introduced into any agreement whereby any seaman
ured to incur any forfeiture or be exposed to any loss in case
rs into her Majesty's naval service shall be void, and every
or owner who causes any such stipulation to be so intro-
hall incur a penalty not exceeding £20, s. 214.

her amendments in shipping laws were made in 1867, by
31 V. c. 124, in respect to medicines, medical stores, and
rbutics; among others, rules were inserted that the Board
e should cause to be published scales of medicines and medical
uitable for different ships and voyages, and also prepare a
ntaining instructions for dispensing the same.

owners of every ship navigating between the United King-
d any place out of the same shall provide and cause to be
board such ship a supply of medical stores in accordance
e scale appropriate to the ship, and also a copy of the book
s containing instructions.

me or lemon-juice to be deemed fit to be taken on board
r the use of the crew or passengers, unless the same has
tained from a bonded warehouse or delivered from any

warehouse, and unless the same is shown, by a certificate u
the hand of an inspector, to be proper for use on board ship.

Seamen's expenses in case of illness through neglect of o
or master to be paid by them, or if illness be caused by defau
seaman, his wages to be forfeited (s. 8). With respect to ac
modation, the space appropriated for each seaman to be not
than 72 cubic feet, and not less than 12 superficial feet, meas
on the deck or floor. Sec. 10 prescribes 16 rules for the me
inspection of seamen applying for employment.

III. BOARD OF TRADE, OWNERSHIP, REGISTRY.

By the 17 & 18 V. c. 104, the Board of Trade has the ger
superintendence of matters relative to the mercantile marine
sisted by Local Marine Boards, the members of which are t
elected by the shipowners. Examinations to be instituted into
qualifications of masters and mates of foreign-going ships,
certificates of competency granted to those who pass. If any l
board fail to discharge its duties, the Board of Trade may ass
its duties, or direct a new election. If a master or mate be
victed of felony, the Board of Trade may cancel his certifica
competency for service; or if upon inquiry he has been fo
guilty of gross or repeated acts of dishonesty, drunkenness
tyranny, certificate may be suspended or cancelled. Certificat
master or mate may be appropriate to station of holder or a s
rior grade. Local Marine Board to establish a shipping-office,
appoint superintendents of such office, to be called shipp
masters, with any necessary deputies, clerks, and servants,
regulate the mode of conducting business at such office, and
complete control over the same. Every act done by any de
shall have the same effect as if done by a shipping-master, s. 1

Ownership of British Ships.—No ship deemed to be a *Br*
ship, unless belonging wholly to owners of the following des
tion:—Natural-born British subjects, who have not taken an
of allegiance to a foreign State. 2. Persons made denizens
naturalized by act of parliament. 3. Bodies corporate, ha
their principal place of business in the United Kingdom, or
British possession.

No owner of any sea-going ship is liable to make good any lo
damage that may happen without his actual fault or privity
to any of the following things, that is to say—of or to any g
whatsoever taken in or put on board any such ship, by reas
any fire happening on board such ship; of or to any gold, si
diamonds, watches, jewels, or precious stones, taken in or pu
board any such ship, by reason of any robbery, embezzlem
making away with, or secreting thereof, unless the owner or shi
had, at the time of shipping the same, inserted in his bills of la

or otherwise declared in writing to the master or owner of such ship, the true nature and value of such articles, s. 503. Owner not liable where all or any of the following events occur without his actual fault or privity: where any loss of life or personal injury is caused to any person being carried in such ship; where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship; where any loss of life or personal injury is, by reason of the improper navigation of such ship, caused to any person carried in any other ship or boat.

Every British ship must be registered, and the certificate of registry comprise the name of the ship, and of the port to which she belongs; the details as to her tonnage, build, and description; the name of her master; particulars as to her origin as stated in the declaration of ownership; the name and description of her registered owner, and, if there is more than one such owner, the proportions in which they are respectively interested. Whenever any change takes place in the registered ownership of any ship, then the master must forthwith deliver the certificate of registry to the registrar, and he shall endorse thereon a memorandum of such change. Every person may, upon the payment of a fee not exceeding one shilling, have access to the register book for the purpose of inspection at any reasonable time during the hours of official attendance of the registrar.

National Character.—No officer of customs shall grant a clearance or *transire* for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance, and if any ship attempts to proceed to sea without such clearance, any such officer may detain her until such declaration is made. If any person uses the *British* flag and assumes the *British* national character on board any ship owned in whole or in part by any person not entitled by law to own *British* ships, for the purpose of making such ship appear to be a *British* ship, such ship shall be forfeited to her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foriegn ship of war in exercise of some belligerent right; in any proceeding for enforcing any such forfeiture the burden of proving a title to use the *British* flag, and assume the *British* national character, shall lie upon the person using and assuming the same, s. 102.

By the Merchant Shipping Act, 1871 (34 & 35 V. c. 110), a ship may not be described by any other name than that by which she is for the time being registered. Application for leave to change the name must be made in writing to the Board of Trade. Whenever in any proceeding against any seaman or apprentice for desertion the ship is alleged by one-fourth (or if they number over 20 by any 5) of the crew to be unseaworthy, the court may order a survey of the ship, and may decide accordingly.

[illegible] sending an unseaworthy ship to sea is guilty of a mis[illegible]meanor, unless he can prove that he made use of all reasonable [illegible] to ensure that the ship should be seaworthy. In 1872 the [illegible] mentioned act was amended by 35 & 36 V. c. 73. The duties [illegible] Commissioners of Customs, with regard to the registry of ships [illegible] were transferred to the registrar-general of seamen.

IV. PASSENGER STEAMERS.

By 17 & 18 V. c. 104, these are held to include every *British* [illegible] ship carrying passengers to, from, or between any place or [illegible] in the United Kingdom, excepting steam ferry boats, working [illegible] rivers. Every steamer to be surveyed twice at the least in each [illegible], and the Board of Trade to appoint such number of fit and [illegible] persons to be shipwright surveyors and engineers' surveyors [illegible] the purposes of this act at such ports or places as it thinks [illegible], and may also appoint a surveyor-general for the United [illegible]gdom, and may remove such surveyors, and fix and alter the [illegible] of remuneration to be received by them. Surveyors, in the [illegible]ution of their duties, to go on board any steamship, at rea[illegible]able times, and to inspect the same, or the machinery, boats, [illegible]ments, or articles on board, or any certificates of the master [illegible], not unnecessarily delaying the ship from proceeding on [illegible] voyage; and if, in consequence of any accident to any ship, or [illegible] other reason, they consider it necessary to do so, to require [illegible] to be taken into dock for the purposes of surveying the [illegible] thereof; and any person who hinders such surveyor from [illegible] on board any such steamship, or otherwise impedes him [illegible] execution of his duty, penalty not exceeding £5. Every sur[illegible] who receives, directly or indirectly, from the owner or [illegible] of any ship surveyed by him, any fee or remuneration, in [illegible] of such survey, otherwise than as the officer, and by the [illegible]tion of the Board of Trade, shall incur a penalty not exceed[illegible] £50. Declaration of survey to be given to the owner by the [illegible]veyor, and the owner to transmit the declaration to the Board [illegible] Trade within fourteen days; penalty for every day's delay [illegible], 10s. each day, s. 310.

By 25 & 26 V. c. 63, every steamship required by 17 & 18 V. [illegible]104, to have a master possessing a certificate from the Board of Trade, shall also have one or two engineers, with a first or second class certificate. Every foreign-going steamship of 100 nominal horse-power, or upwards, to have, as the first and second engineers, two certificated engineers, the first with a first-class certificate, the [illegible] with a second-class certificate, or a certificate of higher [illegible]. Every sea-going home-trade passenger steamship to have [illegible] first engineer, an engineer possessing a second-class [illegible] or one of higher grade. Penalty on any engineer who [illegible] without this requisite, or on the person who employs [illegible]

ch offence a sum not exceeding £50. In the tables to regulations for preventing collisions at sea, with rules lights for steam or sailing vessels, in relation to fog- the steering and meeting of steam and sailing vessels. ighth section of 35 & 36 V. c. 73, it is enacted that ager steamer shall be surveyed at least once a year (in- ice as before), in the manner provided by 17 & 18 V.

V. WRECK AND SALVAGE.

7 & 18 V. c. 104, s. 458, when any ship or boat is otherwise in distress on the shore of any sea or tidal te within the United Kingdom, and services are ren- y person in assisting such ship or boat, in saving the sons belonging to such ship or boat, or in saving the arel of such ship or boat, or any portion thereof; and y wreck is saved by any person other than a receiver Jnited Kingdom, there shall be payable by the owners p or boat, cargo, apparel, or wreck, to the person by services or any of them are rendered, or by whom such ed, a reasonable amount of salvage, together with all operly incurred by him in the performance of such the saving of such wreck. Salvage in respect of the of the life or lives of any person or persons belonging ship or boat as aforesaid shall be payable by the owners or boat in priority to all other claims for salvage. ny ship or boat is stranded, and such ship or boat, or the cargo or apparel thereof, is plundered, damaged, or y any persons riotously and tumultuously assembled hether on shore or afloat, full compensation shall be owner by the inhabitants of the hundred or district to which the offence is committed in manner provided 8 G. 4, c. 31, in case of the destruction of churches ildings by a riotous assemblage.

VI. CHARTER-PARTY.

-party is a contract for the letting the whole or part **a merchant**, called the freighter or charterer, for the **f goods** for one or more voyages. It may be under **riting only**; or a memorandum of a charter-party, **n agreement** for the formation of one, are as common **shipowner** and freighter as charter-parties, and are **ng as if** a more formal instrument had been executed. **stipulations** of a charter-party on the part of the **ter are, that** the ship *shall be seaworthy*, and in a **ssary the** *goods; that she shall be* ready by the day

appointed to receive the cargo; that, after receiving her lading, she shall sail on the first opportunity, and safely deliver her goods at the place of consignment. The chief undertaking of the freighter is to pay the freight, and load and unload the ship within the time agreed upon. Each party, in conclusion, binds himself by a penalty to the full performance of the covenants respectively stipulated.

A charter-party takes effect from the day of its execution or delivery, not from the day of its date, unless the contrary is expressly stipulated.

The freighter may underlet, if not prohibited by the terms of the contract, or may put in another person's goods. The owner is not liable for other than gross neglect in the captain or master, who is for all legal purposes his agent; and his responsibility as carrier commences on the receipt of the merchandise on board.

The freighter generally insures.

VII. BILL OF LADING.

This is an acknowledgment by the master of the shipment of the goods therein enumerated on board his ship, and is a written evidence of the agreement for their carriage and delivery, agreeably to the order or consignment of the shipper. It is distinguished from a charter-party, inasmuch as the charter-party only states the terms and conditions of the freightage or carriage; whereas the bill of lading usually states the quantity, condition, and marks of the merchandise, the names of the shipper, consignee, and master, and the places of departure and destination.

On the receipt of the goods the master or his deputy merely gives a memorandum of their delivery on board, and afterwards signs two or three bills of lading; one of which is kept by the shipper; a second is transmitted to his agent abroad; and a third, which is made out on unstamped paper, is given to the master of the vessel for his guidance.

A bill of lading is transferable by the endorsement of the shipper; and such endorsement and delivery thereof convey the whole property in the goods shipped to the endorsee, for a valuable consideration. The transfer or endorsement of a bill of lading by an agent or factor is, while he acts within the limits of his implied commission, a conclusive sale against his principal. He may even pledge or deposit the instrument as security for an advance, and the principal is bound, if the person making the advance receives no previous intimation that the person so entrusted is not the owner of the goods or merchandise.

Endorsements of a bill of lading may be *general* or *special*. The former does not name the consignee, but imparts a general direction to the master to deliver the goods to the person who

holds the bill of lading at the place of consignment. A *general* endorsement is used when the shipper is doubtful of the solvency of the consignee, and that he may, by this precaution, have it in his power to vary the consignment. A *special* endorsement expresses the name of the consignee.

As a bill of lading is transferable by endorsement, the master is warranted in delivering the goods to the holder of the instrument, unless it is presented under unusual or suspicious circumstances.

Some of these anomalies in respect of a bill of lading are remedied by an act of 1855, the 18 & 19 V. c. 111, enacting that all rights under a bill of lading shall vest in the consignee or endorsee named in the bill, and he shall be subject to the same liabilities in respect of the goods as if the contract contained in the bill had been made with himself. By s. 3, a bill of lading in the hands of a consignee or endorsee for valuable consideration is conclusive evidence of shipment as against the master or other person signing the same, though the goods or some part of them have not been shipped. But the master may exonerate himself by showing that the non-shipment was from no default of his, but of the shipper, or of the holder of the bill.

VIII. FREIGHT.

Freight is the money agreed to be paid for the carriage of goods by sea, and may be made payable either for the whole or part of a ship or cargo, for the whole or part of the voyage, or by the month or any stipulated period.

The terms of the freight are usually expressed in the charter-party or bill of lading. If a gross sum is stipulated to be paid for the whole ship or any part of it, the gross sum is payable though the freighter should not be able to complete his lading. If the agreement specifies payment to be made for every ton burden of the vessel, such payment to be made according to the ascertained tonnage of the vessel, not according to the quantity of goods laden. If the agreement is to pay so much per ton, cask, bale, or chest, freight is payable only for so many tons or articles put on board. In payment by quantity, the fractions of a ton, pipe, or pack, are not reckoned, unless expressly stipulated for in the charter-party.

Freight is not due until the voyage has been completed by the delivery of the goods at the port of consignment. Therefore, if a ship be captured or lost, no freight can be claimed. When a vessel is freighted from one port to another, thence to a third port, and so home to the port from which she sailed (which are called *trading voyages*), should she be captured or lost before her return to the port from which she first sailed, no freight will be due.

Although no freight is due unless a vessel completes her voyage and deliver her cargo at the port of delivery, yet, if advance-money has been paid and described as such in the charter-party, the freighter cannot recover it back, should the ship be lost or captured in the voyage. On the same principle it has been decided, that passage-money, paid in advance, is not recoverable, in case the vessel be wrecked, or unable to prosecute her voyage.

In the payment of freight for living animals, whether men or cattle, some of which may die during the voyage, the following distinction has been made:—If the agreement be to pay freight for *landing* them, the shipowner will be entitled to freight, notwithstanding their death; but, if for *transporting* them, no freight is due for those that die on the passage. No freight, however, is due for an infant born during the voyage.

Where freight is contracted for monthly, or for any other stated period, and the ship is lost or captured, the owner is entitled to freight for the number of months which have transpired previous to the loss or capture.

Payment of freight is demandable from the consignee alone; but receiving goods in the character of agent or broker will not create a liability to pay freight. As the payment of freight is usually made an express condition of the delivery of the goods, the owner has no lien on them till that condition has been fulfilled, and the voyage completed.

If part of the cargo be thrown overboard for the preservation of the ship and the remainder of the goods, or if the master is compelled to sell a part of the cargo for victuals or repairs; in these cases, if the ship afterwards reach the place of destination, the owners will be entitled to the freight for the goods so cast overboard or sold.

As to the right of the freighter to *abandon* his goods, it has been settled, that, where goods have been so damaged during the voyage as to render the freight of more worth than the goods, the freighter, in certain cases, may abandon them, and, by so doing, discharge himself from the freight. If the damage has proceeded from the fault of the master, the merchant may recover compensation from him or the owner, provided he has not received the goods. But if the damage has been caused by the perils of the sea, or has proceeded from natural decay, or any destructive action inherent in the commodity itself, the merchant must bear the loss and pay the freight.

IX. BOTTOMRY AND RESPONDENTIA.

Bottomry is in the nature of a mortgage of a ship, when the owner borrows money to enable him to proceed on his voyage, and pledges the keel, or *bottom* of the ship, as security for the repayment. In this contract it is understood, if the ship be lost, the

his whole money; but, if it return in safety, then he back his principal, and also the premium or interest however it may exceed the legal rate of interest. If tackle be brought home, they are answerable for the as well as the *person* of the borrower. But, if the pon the vessel, but upon the goods and merchandise, be necessarily sold or exchanged in the course of the only the borrower, personally, is bound to answer the o, therefore, in this case, is said to raise money on

sists the difference between *bottomry* and *respondentia*; oan upon the ship, the other a loan upon the goods. case, the lender runs no risk, though the goods shall he latter, the lender is entitled to principal and inte- the ship be lost, provided the goods are safe.
nt of the loan on bottomry or respondentia, in Eng- estrained by any law whatever, though it is, in many ites, by express regulation: the only restriction in that subsequently mentioned (p. 488), with respect t on ships and goods going to the East Indies, which eed the value of the property on which the loan is

ry and respondentiary bonds usually express the nature o which the lender is liable, and are nearly the same the underwriter, in a policy of insurance, undertakes

These risks are tempests, fire, capture, and every r, except such as arise either from defects in the ship se on which the loan is made, or from the misconduct er.
dentia interest is frequently at the rate of 40 or 50 in proportion to the risk and profit of the voyage. ntia lender may *insure* his interest in the success of ut it must be expressly specified in the policy to be interest, unless there is a particular usage to the con- *on Insurance*, 11.

X. AVERAGE.

n maritime contracts and in insurance, has three sig- . It means a partial loss of anything insured, as if oods are partially lost or injured, and the insurer is tionally to compensate the insured; which is called a erage. 2. If the master of a ship in distress throws rd with a view to preserve the whole ship and cargo, loss to the owners of these goods; but that loss, so the general welfare, is brought into a *general* average, re concerned in the ship, freight, or cargo, must bear

a proportional part of it; which average loss so borne by them, their insurers, if they have any, must make good to them. 3. Average is applied to a small payment, which merchants who ship goods make to the master for his personal care and attention to the goods so intrusted to him.

As to particular averages, the insurance companies and underwriters limit their liabilities by conditions attached to their policies to £3 and £5 per centum upon certain articles specifically named. But this restriction does not extend to a loss arising from a general average, in which case the insurers are liable, even though the loss is under three per cent.

The loss arising on a general average is always payable by the insurer, and rated on the value of the articles which are to contribute thereto. The ship is valued at the price she is worth on her arrival at the port of delivery. The freight is valued after deducting seamen's wages, pilotage, and other small charges, denominated *petty averages*, of which the cargo bears two-thirds, and the ship the remaining third.

The goods saved as well as lost are valued at the price they would have fetched at the port of delivery. Each person's share of the loss will bear the same proportion to the value of his property that the whole loss bears to the aggregate value of the ship, freight, and cargo.

When the loss of the ship's rigging or masts is compensated by a general average, two-thirds only of the value of the new articles is contributed. The contribution in general is not made till the ship arrives at the port of delivery, but accidents may happen which may cause a contribution before she arrives at her destined port.

When goods are shipped on an invoice, an average loss upon a policy must be calculated upon the invoice price, and not upon the price of the market at which the damaged goods are arrived.

XI. PILOTAGE.

A pilot is a person who steers or directs the course of a vessel, and is a term applied to an important class of men licensed to navigate ships within certain limits of the coast, and inward and outward the rivers and harbours of the kingdom. Pilotage in the Thames and Medway, and along the coast from Orfordness to the Isle of Wight, is regulated by the Corporation of the Trinity House and the Lord Warden of the Cinque Ports. In other ports of the United Kindom, pilots are appointed and regulated either by local acts, or by ancient charters of incorporation, or by the Mercantile Marine Act, 17 & 18 V. c. 104. In all those parts of a voyage where a pilot is employed by regulation and usage, termed a "pilot's fair way," one must be obtained unless exempt, as will

be hereafter stated. It is only, however, *oversea* vessels, not coasting vessels, on whom the employment of pilots, within the pilotage jurisdiction, is compulsory. The master of a vessel having a regular pilot on board is not responsible for damage caused by the pilot's unskilfulness or negligence. But his proceedings must not be controlled by the master. On the other hand, the pilot's presence does not absolve the master from the consequences of his own carelessness.

The authorities, in matters of pilotage, are empowered to qualify masters or mates who have obtained certificates, to conduct their own vessels. Any master or mate who has passed an examination and obtained a certificate of seamanship and fitness, may navigate his own vessel within the limits in regard to which he has passed his examination. Such certificate to be renewed annually: but the certificated party not to employ any unlicensed pilot to assist him. Certificates can only be granted by the Trinity House, or other competent authority: to be used within the limits of their jurisdiction, and when a concurrent jurisdiction exists, the certificate must be obtained from each separate authority.

By 35 & 36 V. c. 72, s. 9-11, Trinity House may modify the rules as to pilotage rates, and any pilotage authority may, if authorized in that behalf by order in council, grant special licenses qualifying the persons to whom they are granted to act as pilots for any part of the sea or channels beyond the limits of any pilotage authority, but no pilot so licensed to supersede an unlicensed pilot outside the limits of the authority by which he is licensed.

XII. MERCHANT SHIPPING ACT, 1873.

By 36 & 37 V. c. 85, every British ship registered after the passing of the act, shall, before registry, and every British ship registered before the passing of the act, shall, before the 1st of January, 1874, have particulars as in the act mentioned marked on her. The act deals with the agreements with seamen under s. 149 of the act of 1854, and gives seamen compensation for unnecessary detention on charge of desertion.

The act also empowers the Board of Trade to establish mercantile marine offices, and to hold examinations at certain ports. It also deals with the survey of ships supposed to be unseaworthy, and states the duties of masters in case of collision. It also places restrictions on carriage of dangerous goods, and gives the master power to refuse to carry them, or to throw such goods overboard. In any legal proceedings under the Merchant Shipping Acts, the Board of Trade may take proceedings in the name of their own officer.

The following signals are to be used when a pilot for a ship is required, on and after the 1st of November, 1873, and for using

any other signal the offender is to be liable to a penalty not exceed £20 :—In the day-time, to be hoisted at the fore, the jack or o national colour usually worn by merchant ships, having round white border one-fifth of the flag, or the International Code pilo signal indicated by P. T. At night, the pyrotechnic light comm known as a blue light, every fifteen minutes, or a bright w light flashed or shown at short or frequent intervals, just above bulwarks, for about a minute at a time.

The new signals in the day-time, to be used when a ship distress, are three in number :—1. A gun fired at interval about a minute ; 2. The International Code signal of distress cated by N. C. ; and 3. The distant signal, consisting of a sq flag having either above or below it a ball, or anything resemb a ball. At night the signals to be—1. A gun fired at interva about a minute ; 2. Flames on the ship, as from a burning barrel, oil-barrel, &c. ; and 3. Rockets or shells of any colou description, one at a time at short intervals. Any master vessel who uses or causes or displays, or permits any person u his authority to display, any of the signals, except in a case vessel being in distress, shall be liable to pay compensation for labour undertaken, and such compensation may, without preju to any other remedy, be recovered in the same manner in w salvage is recovered.

CHAPTER XII.

Insurance.

INSURANCE is defined by Marshall to be a contract whereby party, in consideration of a stipulated sum, undertakes to inc nify the other against certain perils or risks to which he is exp or against the happening of some event. The party who t upon him the risk is called the *insurer*, sometimes the *underwr* from subscribing his name at the foot of the policy ; the p protected by the insurance is called the *insured ;* the sum pai the insurer as the price of the risk is called the *premium ;* the written instrument, in which the contract is set forth anc duced into form, is called a *policy of insurance.*

A policy may be either *valued* or *open :* in the former, the perty insured is valued and specified ; in the latter, it is not r tioned. In an open policy the real value must be proved, in other it is settled.

Policies are usually effected by the intervention of a brol they must be duly stamped ; and, being considered a simple tract, must be construed, as nearly as possible, according to

intentions of the contracting parties, and not according to the strict meaning of the words. The least shadow of fraud entirely vitiates the instrument; both parties are bound to disclose all circumstances within their knowledge; any concealments of facts, false statement, or misrepresentation, at the time of making the contract, cancels the policy.

Insurance is of different kinds; as of ships and goods against risk at sea; the lives of individuals; and of houses, buildings, and other property against fire. The subject may be distributed as follows:—

1. *Marine Insurance.*
2. *Wager Policies.*
3. *Insurance against Fire.*
4. *Insurance of Lives.*
5. *Annuities for Lives.*

I. MARINE INSURANCE.

By the 6 G. 1, c. 18, the Royal Exchange Assurance Company and the London Assurance Company had the exclusive privilege of underwriting policies of *marine* insurance, and all undertakings by other persons were declared void. But by 5 G. 4, c. 114, any other corporation, or any persons in partnership, may grant policies of insurance on ships or goods at sea, and also make contracts of bottomry.

In a marine insurance, if a man warrant to sail on a particular day, and fail to do so, the underwriter is no longer liable. So if the warranty be to sail after a specific day, and the ship sail *before*, the policy is equally vacated.

If the insured warrant the vessel to sail with *convoy*, and it do not, the policy is void. But if the insured warrant the property on board to be *neutral* property, and it is not, the contract is not merely void, as for a breach, but it is absolutely void from the commencement, on account of the fraudulent concealment of a known fact.

The changing of a ship, or, as it is commonly called, the *bottom*, is a bar to the insured recovering upon a policy of insurance against the underwriter; or a deviation from the usual and regular course of the voyage equally discharges the insurer from liability.

It has also been determined that every ship insured must, at the time of the insurance, be able to perform the voyage, unless some external accident should happen; for if she have a *latent* defect, even wholly unknown to the parties, that will vacate the policy, and the underwriter is discharged.

Insurance made on a voyage prohibited by the laws of the country, or to recover any trading with the enemy, or to protect the

importation or exportation of commodities declared to be illegal, are all void, and the insured cannot recover the premium.

Nor in any case can a premium once paid upon an *illegal* insurance be recovered back.—*See* further, 30 & 31 V. c. 23; 31 & 32 V. c. 86; and as to stamps, 33 & 34 V. c. 97.

II. WAGER POLICIES.

Contracts of insurance are protected and encouraged by the laws with a view of distributing the loss or gain among a number of adventurers, so that no unforeseen calamity may plunge any single individual or party into irretrievable ruin. But a practice formerly obtained of insuring large sums without having any property on board, or interest at stake, which was called an insurance, *interest or no interest:* and also of assuring the same goods several times over; both of which were a species of gambling without any advantage to commerce, and were denominated *wager policies*.

To prevent such fictitious or gambling transactions, the 19 G. 2, c. 37, provides that all insurances, interest or no interest, or without further proof of interest than the policy itself, or by way of gaming, or wagering, or without benefit of salvage to the insurer, shall be null and void; and that no re-assurance or double assurance shall be lawful, except the former insurer shall be insolvent, a bankrupt, or dead; and lastly, in the East India trade, the lender of money on bottomry, or at *respondentia*, shall alone have a right to be insured for the money lent, and the borrower shall, in case of a loss, recover no more than his absolute share in the ship or merchandise.

The statute does not extend to *foreign* ships, upon which there may still be insurances, interest or no interest; these were not included in the act, from the difficulty of bringing witnesses from abroad to prove the interest.

III. INSURANCE AGAINST FIRE.

By a contract of insurance against fire, the insurer, in consideration of a certain premium received by him, either in a gross sum or by annual payments, undertakes to indemnify the insured against all loss or damage which he may sustain in his house, or other building, stock, goods, and merchandise, by fire, during a limited period of time.

Some of the companies for insuring against fire have been established by royal charter; others by deed enrolled; and others give security upon land for the payment of losses. The rules by which they are governed are created by the managers, and

a copy given to every person at the time he insures; so that by his acquiescence he submits to their proposals, and is fully apprised of the terms by a compliance with which he will be entitled to indemnity.

Policies of assurance against fire are not assignable; nor can the interest in them be transferred from one person to another without the consent of the insurers. But when a person dies, the policy and interest therein continue to the parties to whom the property belongs, provided, before any new payment be made, they procure their names to be indorsed at the insurance office, or the premium to be paid in their names.

In the body of the policy the insurers acknowledge the receipt of the premium at the time of making the insurance; and, by the printed proposals, it is stipulated that no insurance shall take place till the premium be actually paid by the insured or their agents. The Exchange Company, the Phœnix, and some others, however, allow fifteen days for the payment of the insurance upon annual policies and all other policies of a longer period. But policies for a shorter period than a year cease at six o'clock on the evening of the day mentioned in the policy.

When a fire happens, notice should be immediately given to the office, and, as soon as possible after, or within a limited time, according to some regulations, an account given, upon oath or affirmation, of the loss sustained, supported by books of account, and such other vouchers as may be required or may be in existence. It is also required by some offices to procure a certificate, signed by the minister and churchwardens, together with some respectable inhabitants of the parish, not concerned in the loss, importing that they are well acquainted with the character and circumstances of the parties, and that they know or believe they have suffered the damage alleged.

"Very few polices," Lord St. Leonards says, "against fire are so framed as to render the company *legally* liable. Generally, the property is inaccurately described with reference to the conditions under which you insure. They are framed by the company, who, probably, are not unwilling to have a legal defence against any claim, as they intend to pay what they deem a just claim, without taking advantage of any technical objection, and to make use of their defence only against what they may believe to be a *fraud*, although they may not be able to prove it."—*A Handy Book on Property Law*, note, p. 46.

To whatever amount persons insure, they can only recover to the amount of the loss actually sustained; for, were it otherwise, it would obviously open a door to fraud and collusion.

Most offices consider themselves liable to partial losses; and the printed conditions of some of them undertake to allow all reasonable charges attending the removal of goods in cases of fire, and to pay the sufferer's loss where *the goods* are destroyed, lost, or damaged by *such removal.*

IV. INSURANCE OF LIVES.

The insurance of a life is a contract whereby the insure sideration of a certain premium, either in a gross sum odical payments, proportioned to the age, health, p and other circumstances of the person whose life is undertakes to pay the person for whose benefit the in made a stipulated sum, or an equivalent annuity, upon of the person whose life is insured, whenever this e happen, if the insurance shall be for the *whole* life, this shall happen within a certain period, if the ins for a *limited* time.

The chief utility of this kind of insurance is in provision for a family, or others, whose dependence life of an individual. Persons having incomes determin their own lives, or the lives of others, arising from la perty, from professions, from church livings, from p ployments, pensions, annuities, &c., by paying such a premium as they can spare from their present wants, n to their widows, their children, or other dependants, an sum of money, or an equivalent annuity, payable upon th

It is also resorted to by those who are desirous of rais for which the chance of repayment depends on the li borrower. Thus, if A lend £100 to B, who can giv but his personal security, in order to secure A, in ca death, B applies to C, an insurer, to insure his life of A; by which means, if B die within the time limit policy, A will have a demand upon C for the amou insurance.

The same rules and observations which apply to ins general, and which we have noticed more particular the head of Marine Insurance, apply to insurance up the same mode of construing the policy is to be adopt will equally vacate one as the other; and the same must be paid to all warranties with regard to health, fession, &c.

Where there is an express warranty that the person i *health*, it is sufficient that he is free from any existing for it can never mean that he is free from the seeds o Even if the insured labour under a particular infirmity be proved by medical men that it did not at all, in their contribute to his death, the warranty of health has been plied with, and the underwriter is liable.

With respect to the risk which the underwriter is to usually inserted in the policy, and includes all those ac which human life is exposed, except suicide, or death by

of justice. When the risk is once begun there can be no apportionment or return of premium. So, if a person whose life is insured were to put an end to it next day, or should be executed, there would be no return of premium, though the insurer is discharged.

To prevent gambling transactions in insurance upon lives, it is declared by 14 G. 3, c. 48, that every insurance is void, made upon life or other event, wherein the person for whose benefit or on whose account such insurance is granted shall have no *interest*. It is further provided that the name of the person interested shall be inserted in the policy, and in all cases where the insured has an interest in such life or event, no greater sum shall be recovered or received from the insurer than the amount or value of the interest insured.

Most offices, however, at the present day are willing to pay sums insured in cases free from actual fraud, without taking advantage of the strictness of the law relating to the avoidance of policies on the ground of the suicide, &c., of the insured, or the want of insurable interest.

By the Life Assurance Companies Act, 1870 (33 & 34 V. c. 61), every company is compelled, at the conclusion of its financial year, to make a statement of its revenue account for such year, and of its balance-sheet at the conclusion of such year, in the form prescribed by the act. It is imperative on every company, once in every five years, if established after the 9th of August, 1870, and once every ten years if before that date, to cause an investigation to be made into its financial condition by an actuary, and to publish an abstract of his report.

A statement of all companies' life assurance and annuity business must be prepared annually, within nine months of such investigation being held, and every statement and abstract must be signed by the chairman and two directors, and by the principal managing officer, and be printed and deposited with the Board of Trade.

V. ANNUITIES FOR LIVES.

Annuity is a yearly payment of a certain sum of money for life, or a term of years; if payable out of lands, it is properly called a *rent-charge;* but if both the person and estate be made liable, as they frequently are, then it is called an annuity. It arises frequently out of the same necessity as an insurance on life, the inability of the borrower to give the lender a permanent security for the return of the money borrowed; he therefore stipulates to pay, during his life, an annual sum proportioned to the loan advanced and the contingency of the borrower's death.

The grantee of an annuity usually insures the life of the grantor, and will not advance the money till he is certain some insurance office will insure the life; and he usually adds the amount of the annual insurance to the annual interest, and makes the grantor pay *both* in one entire sum of, perhaps, £15 *per cent.*; so that in truth the grantee is, out of the pocket of the grantor, indemnified from all risk, and clears eleven or twelve per cent. To place some check upon improvident transactions of this kind, which are usually carried on with privacy, various acts of parliament have been passed.

Under 10 G. 4, c. 24, and other statutes, the commissioners for the reduction of the national debt may grant life annuities payable out of the consolidated fund, either on one or two lives, or on the continuance of two joint lives, and in general any description of annuity, either to commence immediately or at a future period, or for any term of years. Annuities granted under this act are proportioned to the duration of human life, as ascertained by tables of observation approved by the Treasury. The purchase is to be made either by the transfer of not less than £100 stock, or by the advance of money, or by the payment of any sum yearly not less than £5. Annuities will not be granted in any case where the commissioners may think fit to decline.

CHAPTER XIII.

Deeds—Assignment—Composition and Inspectorship—Warrant of Attorney—Covenant—Promise.

A DEED is an instrument in writing, on parchment or paper, signed, sealed, and delivered by the parties. It may be written in any hand, or in any language; and, if it be made by more parties than one, it was formerly said that there ought to be as many copies of it as there were parties, and each should be cut or indented at the margin, to tally or correspond with the other; which deed so made was called an *indenture*. The name still remains, though the practice of corresponding copies is obsolete. A deed made by one party only is not indented, but polled, or cut even, and therefore called a *deed poll*, or single deed. Indenting, however, is not indispensable to the validity of a deed.

It seems that there are seven things necessary to a valid deed. 1. The parties must be able to contract, and there must be a subject to contract for; all which must be expressed by sufficient names. 2. The deed must be founded upon a valuable or good consideration, not upon fraud or collusion, to deceive purchasers or

and lawful creditors. But, in this case, though the deed will oid, as against *bonâ fide* purchasers and lawful creditors, it not be void as between the parties themselves, that is, the ıtor or grantee cannot vacate his own act. 3. The deed must *written* or *printed*, and on a stamp where required by law, rwise it cannot be given in evidence. But now unstamped is may be given in evidence on payment to the officer of the rt of the amount of stamp duty and penalty. 4. The matter he writing must be legally, orderly, and intelligibly set forth. The deed must be *read* to any of the parties, if required. If l falsely it is void; and if any of the parties cannot read, it ıt be read to them. 6. It must be *sealed* and *signed;* though seems sealing and delivering without signing is sufficient, unless leeds executed under powers, 6 *Madd.* 116. 7. The last requi- to a deed is the *attestation*, or execution of it, in presence of nesses; though this is in most cases proper rather for preserving evidence than for constituting an essential part of the deed.

Bad grammar will not make a deed void; but erasure, or in- lineation in a material part, may have that effect, and it is ıal in such cases that some memorandum thereof be made on back of the deed, testifying that it was done before sealing.

When the seal has been affixed, and afterwards broken off, or faced, by accident, the deed is still valid. If, however, a person whom another is bound, *intentionally* break off the seal, it is d to destroy the instrument, but not so if the party who is bound eak off the seal.

It is not essential to the validity of a deed that it should be ted; when no date is inserted, the time will be reckoned from e delivery, 2 *Raym.* 1076.

Personal property will pass by delivery from hand to hand, but real property, land or houses, can pass otherwise than by grant deed, or by descent or devise.

In relation to conveyances by deed for *charitable uses*, the 24 & 5 V. c. 9, enacts that no future deed or assurance of any heredita- ents, or of any estate or interest therein, made for charitable uses all be void by reason of not being indented; nor from such grant ntaining any specified stipulation for the donor's benefit; nor, in se of copyhold, from such grant not being made by deed; and at all reservations shall be continued to the representatives the donor for their benefit. By s. 2, where the charitable uses a deed are declared in a separate deed or instrument, it is not cessary to enrol the deed of gift as prescribed in 9 G. 2, c. 36, but e separate or other deed will be null and void unless enrolled in e Court of Chancery within six calendar months of its being per- cted; and no past deed, by which any estate or interest is held r valuable consideration is to be considered void if duly enrolled the Court of Chancery, or be so enrolled within twelve months om the passing of the act. By s. 4, where the charitable uses of

any past deed, under which possession is now held, have been declared by any other deed which has been enrolled, such enrolment shall be deemed sufficient; but where neither deed has been enrolled, the enrolment of such separate deed within twelve months from the passing of the act is requisite to prevent the deed becoming void. Act not to invalidate or extend to deeds already made good and valid under the provisions of the 9 G. 4, c. 85, nor to deeds already avoided by any suit in law or equity; nor to prejudice any suit actually commenced; nor any deed or instrument thirty years old; and no deed or instrument, heretofore executed, as to which it shall be proved to the satisfaction of the clerk of enrolments that the acknowledgments of the grantor cannot be obtained within twelve calendar months, shall need such acknowledgment prior to enrolment. Act does not extend to Scotland or Ireland, or to the prejudice of the universities of Oxford or Cambridge, or to the colleges of Eton, Winchester, or Westminster.

By an act of 1863, the 28 & 29 V. c. 106, every deed or assurance by which land has been demised for any term of years for charitable uses is, for all the purposes of the acts 24 & 25 V. c. 9, and 9 G. 2, c. 36, deemed to have been made to take effect for the charitable use intended immediately from the making thereof, if the term for which such land has been demised was made to commence and to take effect in possession at any time within one year from the date of such deed of assurance.

By a subsequent act, 29 & 30 V. c. 57, trustees or managers of charities may at any time procure the enrolment of deeds on application to the Court of Chancery.

II. ASSIGNMENT.

An *assignment* is a deed or instrument of transfer, the operative words of which are to "assign, transfer, and set over" to another some right, title, or interest in real or personal property. A possibility, right of entry, title for condition broken, a thing in action or cause or suit, cannot be granted or assigned over. An office of trust is not assignable, neither is a personal trust, nor trusteeship, nor executorship, assignable. Arrears of rent, and the like, as things in action, are not assignable. Several things are assignable by custom, or act of parliament, which seem not assignable in their own nature; as promissory-notes, bills of exchange, bail-bonds by the sheriff, and the effects of a bankrupt.

The subjects most usually assigned are leases and terms of years, legacies, mortgages, goods, and interests in funded property: transfers of goods, furniture, and ships are generally styled *bills of sale*. In the transferring of property, in general terms, contingencies will not pass, until particularly mentioned. An assignment of debt to another may be effected by mere words; but the

's assent, and of all parties interested in the transfer, is

signment for the benefit of creditors is generally of the f the debtor's property, which assignment the creditors n lieu of their respective claims. Unless, however, all the assent, such assignment may be a fraud on the bankrupt disabling an insolvent from carrying on business; and by kruptcy Act, 1869, a fraudulent assignment is an act of tcy.

signment by joint traders must have the assent of all the creditors, as well as the joint creditors, or the assignment oid as to the separate creditors who may not assent.

d of trust for the payment of debts extends only to debts ad been contracted at the time of executing the deed.

d of assignment, if not executed at the period agreed upon reditors, is void in law; but if it be afterwards executed ie creditors, it is valid in equity, *Coop.* 102.

erson, after assigning his property, embezzle any portion, qualified from deriving any benefit from such assignment.

Eliz. c. 5, all gifts, grants, and assignments of property, *intent* of delaying or defrauding creditors or others of t claims, are void; and principals and accomplices in udulent conveyances to forfeit one year's value of the land, whole value of the goods, and suffer six months' imprison- Act does not extend to conveyance or assignment on good ation; nor to persons not privy to the fraud or collusion.

e construction of this statute it has been held, that the n by the debtor of the possession of goods after assignment *facie* evidence of fraud. Nor will it alter the case, that itor had reserved to himself the liberty of taking possession stipulated time, or that he had conditioned that the profits e accounted for to himself from the date of the assignment, arty making the assignment has been allowed to have pos- of the property assigned.

III. COMPOSITION AND INSPECTORSHIP.

osition is when creditors agree to accept part of their debts ischarge of the whole, either by the payment of a certain the pound at one time, or by instalments, guaranteed or responsible person, or by an assignment of securities. In agreement for composition *not under seal* is not binding editor, even after acceptance of the composition, unless some consideration for it, either by an assignment of goods sponsibility of a third party.

a creditor executes a composition deed, although he does the amount of his debt opposite to his name, yet he is

bound by the terms of the composition to the whole amount of his then existing debt.

It is incumbent on an insolvent to fulfil the terms of the composition, or the creditors will be released from their obligations to accept it. To entitle himself to the full benefit of the bond, he must not practise any *fraud*, but give a fair representation of his affairs; for if any misrepresentation has been used to obtain the creditor's consent, the creditor will not be bound by the instrument, although he may have executed it.

A *private* agreement between a creditor and insolvent for additional security, though not for more than the amount of the composition, is fraudulent and void. So, also, in *any private* agreement with a creditor to pay him in full, or more than the other creditors. But a partial agreement with a creditor to pay his full debts does not invalidate the bond; provided such agreement is not *secret*, but made with the full knowledge and assent of the other creditors, 13 *Ves.* 586.

A creditor may be bound by a composition deed, although he has not actually signed it. For if a creditor acts under a composition agreement, a court of equity will act under it also, and the creditor's assent to the arrangement will be equally implied as if he had formally assented to and executed the bond.

If the holder of a bill of exchange or promissory-note agree to accept a composition from the *acceptor* of the bill or drawer of the note, he will discharge all the others, who are subsequent parties, unless the composition is entered into with their consent.

A Deed of Inspectorship is sometimes entered into by an insolvent, which appoints certain persons inspectors of his dealings for a limited period, or until he has paid the whole, or such composition for his debts as is agreed upon. Such a deed should give power to the trustees to stop the insolvent if he commit any breach of the agreement, but should avoid making such a disposition of the property, or any part thereof, as to constitute an act of bankruptcy.

See further the Bankruptcy Act, 1869, *post*.

IV. WARRANT OF ATTORNEY.

This instrument is sometimes incautiously given by persons who are sharply pressed by their creditors; both a warrant of attorney and *cognovit* authorize the creditor to enter up judgment and levy execution, either instantly or within a certain time specified in the instrument; the party giving such instrument is liable after the same is due and in operation, at any moment to have, perhaps, all his property taken from him and sold at ruinous prices, thereby curtailing, if not entirely destroying, his future prospects. Moreover, the debtor is placed in a painful state of incertitude as

previous to the execution ; and as it is necessary to file
or cognovit, within twenty-one days from its date, in
ce, that alone is sufficient to deter other persons from
t, the fact being easily ascertained of such a sweeping
being suspended over the party's head and property.
4, c. 39, provided that a book should be kept by the
docquets in the Court of King's Bench, in which every
attorney, or *cognovit actionem*, or copy thereof, should
to be searched at all reasonable times by any one,
; of 6*d*. for each person searched for. The 6 & 7 V.
ts that, in addition to such book, another book or index
ept of the names, additions, and descriptions of the
ing such warrants of attorney, or cognovits, but no
iculars (these being entered into the book under the
t, as heretofore) ; this index to be open to inspection,
nt of 1*s*. for the search for each name sought for.
ors Act, 1869 (32 & 33 V. c. 62), enacts that no war-
rney or cognovit shall be of force unless there be present
on behalf of the party executing, expressly named by
tending at his request to inform him of its nature and
: it is executed ; which attorney is to subscribe his name
1 to the execution.
t of attorney is also void against creditors unless filed in
Bench.

V. COVENANT.

nt is the agreement of two or more persons to do or
specified act, and is created by deed, in writing, sealed
d by the parties.
covenant to be in London on a particular day, and is
lon by the time appointed, that is a breach of covenant,
n action will lie. So, if a man, for a valuable consi-
gree that he will not exercise his trade or profession
articular place, he is bound by it ; but an obligation
s a person to a total restraint of trade, whether for a
e or generally, is unlawful and void.
ant must be to do what is *lawful*, or it will not be
nd if the thing to be done be impossible, the covenant

n covenant with one to pay him money on a time to
the covenantee die before the day, his executors have
f covenant for the money. Also in every case where a
bound by a covenant, the executor is liable, if it be not
by the testator's death ; but there may be a covenant
performed by the parties themselves.
and articles of covenant, sometimes, a clause for per-
ith a penalty is inserted ; and, at other times, and more

frequently, bonds are given for the performance, with a sufficient penalty, separate from the deed; but the penalty is considered only as a security for the amount of damage actually sustained.

The common use of covenants is for assuring quiet enjoyment of land, for payment of rent reserved, and concerning repairs, damages, and accidents. They are generally construed most strongly against the covenantor, and in favour of the covenantee.

VI. PROMISE.

A *promise* is of the nature of a verbal covenant, and, when made upon sufficient consideration, wants only the formality of writing and sealing to be absolutely the same. The legal remedy, however, for non-performance was formerly different; since, instead of an action of covenant, there was an action on the case for the assumpsit, or undertaking of the defendant; the failure of performing which is the wrong or injury done to the plaintiff, the damages whereof a jury are to estimate and determine. These technicalities, however, are for the most part abolished.

The Statute of Frauds enacts, that, in the five following cases, no verbal promise shall be sufficient to ground an action upon, without, at the least, some note or memorandum of the transaction be made in *writing*, and signed by the party to be charged therewith, or some other person lawfully authorized by him:—1. Where an executor or an administrator promises to answer damages out of his own estate. 2. Where a man undertakes to answer for the debt, default, or miscarriage of another: and in this case even a written undertaking was formerly void, unless a good consideration appeared in the writing; but this was altered by 19 & 20 V. c. 97. 3. Where an agreement is made upon consideration of marriage. 4. Where any contract or sale is made of lands, tenements, hereditaments, or any interest therein. 5. And, lastly, where there is any agreement that is not to be performed within a year from the making thereof.

Though the statute imposes the necessity of *writing*, it does not thereby waive any of the prior requisites to make a valid promise; as, for example, the want of a valuable consideration.

The statute requires the "agreement, or some memorandum or note thereof," to be put in writing; this means not merely the bare promise, but the *terms* of the contract and consideration.

The third clause does not include *mutual* promises to marry; it relates only to agreements to pay marriage portions, make settlements, or to do other acts in consideration of marriage.

If a promise depend upon a contingency, which may or may not fall within a year, it is not within the statute: as a promise to pay a sum of money upon a death or marriage, or upon the return

a ship, or to leave a legacy by will, is good by parol; for such a promise may, by possibility, be performed within the year.

A court of equity will decree a specific performance of a verbal contract when it is confessed by a defendant in his answer, or when there has been part performance of it, as by delivery of possession, or the like: for such acts preclude the party from denying the existence of the contract, and prove that there can be no *fraud* or perjury in compelling the execution of it. But a specific performance cannot be decreed if the defendant, in his answer, admit a parol agreement, and at the same time insist upon the benefit of the statute, 6 *Ves. Jun.* 37.

If one party only sign an agreement, he is bound by it: and if an agreement be by parol, but it is agreed it shall be reduced into writing, and this is prevented by the fraud of one of the parties, performance of it will be decreed.

When a man is under a moral obligation, as a *minor* to pay the debts contracted in his minority, or a debt protected by the Statute of Limitations, the honesty and rectitude of the thing in these cases is deemed a sufficient consideration, although there be no strict legal debt existing.

By 9 G. 4, c. 14, no confirmation, after full age, of any promise or contract made by an *infant*, is sufficient to sustain an action unless given in *writing*, signed by the party to be charged therewith. Nor is any promise to pay a debt, protected by the Statute of Limitations, valid, unless *in writing*, and signed in a similar manner.

See *Promises*, as a *guarantee*, in chapter on CONTRACTS, p. 465.

VII. FINDING.

The law of *finding*, after much discordant decision, has been lately determined in the court of Criminal Appeal in *Reg.* v. *Wood*, and again in *Reg.* v. *Moore* (Easter Term, 1861). 1. If a man find goods that have been actually lost, or are reasonably supposed by him to have been lost, and appropriates them with intent to take the entire property of them, really believing, when he takes them, that the owner cannot be found, it is not theft. 2. But if he takes them with the like intent, though lost, or reasonably supposed to be lost, but reasonably believing that the owner can be found, it is larceny. In this case the prisoner had found a bank-note, but had no means of knowing who was the owner. Afterwards he was informed who the owner was, but notwithstanding he changed it and applied the money to his own use. He was held not to be guilty of larceny, because, when he found it, he did not know that the owner could be found.

This version of the law of finding doubtless applies to parcels, packets, or other chattel property, left by oversight or negligence

in the possession of a stranger. They can be appropriated by the finder or possessor only in the entire absence of any likelihood or natural possibility of the real owner appearing or being found.

CHAPTER XIV.

Debtors and Creditors.

Considerable efforts have been made of late years to improve the Debtor Laws, and to lessen the costs of litigation in the recovery of debts, especially those of small amount; still, the anxiety, loss of time, and expense incurred in suits are such as to render considerate persons very cautious in instituting them. Whether an action is begun in a superior court, or in one of more limited jurisdiction, the costs are onerous, and which the debtor not unfrequently, by availing himself of the Bankrupt acts, throws upon the creditor. Another discouraging accompaniment of lawsuits is the rule that allows no more than *taxed costs* to a successful litigant, leaving him to pay the difference between them and the law charges of his legal adviser. It often happens that a person who sues for a trifling debt, and gains the day *with costs*, is mulct three or fourfold as much for his own share of the expenses.

Having prefaced these admonitory hints, we shall briefly notice the legal changes in the relations of Debtor and Creditor. By 1 & 2 V. c. 110, the power to arrest in *mesne process* was abolished, and the debtor could only be arrested after judgment obtained from a competent tribunal, except he was likely to leave the kingdom, under which apprehension, if the debt amounted to £20, a special order might be obtained to hold him to bail. In compensation for the loss of power over the person, more effectual remedies were given to judgment creditors over the property of their debtors, by empowering the sheriff to deliver execution of all lands and tenements, freehold or copyhold, of which the debtor or any one in trust for him, shall be possessed, or over which he has any disposing power, for his own benefit, at or after the time of entering up judgment. The sheriff may also, under a *fieri facias*, seize money or bank-notes of any kind, and any cheques, bills of exchange, promissory-notes, bonds, specialities, or other securities for money, the money and bank-notes to be paid over to the creditors, and the cheques, bills, &c., to be held by the sheriff as security. Judgments are to carry interest at the rate of four per cent.

In 1844, another important experiment was made in the Debtor Laws; the act of 1838 having abolished the power of arrest on mesne process, the 7 & 8 V. c. 96, s. 57, abolished arrest on final

process, and prohibited imprisonment upon any judgment obtained in any court when the debt recovered did not *exceed twenty pounds*, exclusive of costs. Persons under execution at the time of this act for debts of less amount than £20, might obtain their discharge on application to a judge, and in consequence the prisons were immediately cleared of all debtors incarcerated for small sums. But a power of imprisonment was allowed to the creditor by s. 59, if the debt had been contracted under false pretences, or with a fraudulent intent, or without having at the time any reasonable assurance of being able to pay.

The abolition of the power of imprisonment, both on mesne process and for judgment debts not exceeding £20, was a great curtailment of creditorial coercion, especially of retail tradesmen, whose current book-debts are chiefly below that amount; and consequently it deprived them of all compulsory process against the person for the recovery of small debts, even under judgment, leaving them solely to an execution against property, which, in the case of debtors who were not householders, or without seizable chattels, might be evaded, either by the clandestine removal or disposal of their goods. The act, therefore, was equivalent to the confiscation of debts under £20 owing from the numerous floating class of debtors; but a remedy was attempted in the following session, by the 8 & 9 V. c. 127.

Under this act it is provided, that any creditor obtaining a judgment or order from any court of competent jurisdiction in England, in respect of a debt not *exceeding* £20, besides costs of suit, may obtain a summons for such debtor from any commissioner of bankruptcy, or any inferior court for the recovery of small debts having for a judge either a barrister, special pleader, or an attorney of not less than ten years' standing, such courts having jurisdiction over the district in which the debtor resides. The application is to be by petition. On the debtor appearing, he may be examined, and, if the creditor think fit, be interrogated as to the manner and time of his contracting the debt, the means or prospect of payment he had, or may then have, and as to the disposal of any of his property since contracting the debt; the creditor may also be examined, if the court think fit or the debtor desire it, as to the nature of the claim; and the court is to make an order on the debtor for the payment of the debt, in instalments or otherwise. If the debtor fail to attend, without affording a satisfactory excuse for non-attendance, or if he refuse to disclose his property or transactions respecting the same, or not answer to the satisfaction of the court, or shall appear to have been guilty of fraud in contracting the debt, or of having concealed or made away with his property in order to defeat his creditors, or if he appear to have the means of paying the instalments ordered by the court and neglect to do so, the court is empowered to commit any such debtor to the common gaol for debtors for any time not exceeding forty days. No protection or

interim order from the Bankruptcy or Insolvent Debtor's Court, nor any certificate obtained after such order for imprisonment is issued, is available to protect the person of the debtor. Imprisonment under the act does not operate as an extinguishment of the debt; but, on payment of debt and costs, or the instalment due, the debtor may be liberated from confinement, with the consent of the creditor and the court. In applications to the court, either by creditor or debtor, it is not requisite to employ either counsel or attorney. Wearing apparel, bedding, and implements of trade, to the value of £5, are protected from execution. Suits, in which the claim exceeds £10, may be removed by *certiorari*, or the leave of a judge, into the superior courts of Westminster. Power is given to execute warrants and levy executions, out of the jurisdiction of the court, by procuring the endorsement of a justice of the peace for the district. The application under the act to summon a debtor, must be signed by the creditor himself: the signature of an attorney or agent of the creditor will not suffice.

The 32 & 33 V. c. 62, abolishes imprisonment for debt, with exceptions, namely, default in payment of a penalty, except in respect of any contract; or a sum recoverable summarily before a justice; or a trustee acting in a fiduciary capacity; with other exceptions: but in no case is imprisonment to be for a longer period than one year. By s. 5, a saving power of committal for small debts, for any term not exceeding six weeks, or until payment of the sum due. But by s. 6, power is given to arrest a defendant, proved to the satisfaction of a judge as about to quit England, and the cause of action is to the amount of £50 or upwards. The second part of this act, s. 11, provides for the punishment of fraudulent debtors by imprisonment for any time not exceeding two years, with or without hard labour. The frauds specified amount to sixteen, consisting, generally, of false representations of property, collusive transfers of it, and other practices for the misleading and deception of creditors. By s. 12, if any person who is adjudged a bankrupt, or has his affairs liquidated by arrangement after the presentation of a bankruptcy petition against him, or the commencement of the liquidation, or within four months before such presentation or commencement, quits England, and takes with him any part of his property to the amount of twenty pounds or upwards, which ought to be divided amongst his creditors, he shall (unless the jury is satisfied that he had no intent to defraud) be guilty of felony, punishable with imprisonment for not exceeding two years, with or without hard labour.

For fraudulently obtaining credit, s. 13 provides, that any person shall in each of the cases following be deemed guilty of a misdemeanour, and on conviction be liable to be imprisoned for any time not exceeding one year, with or without hard labour: that is to say, if in incurring any debt or liability he has obtained

credit under *false pretences*, or by means of any other fraud; if he has, with intent to defraud, made or caused to be made any gift, delivery, or transfer of or any charge on his property; or if he has, with intent to defraud, concealed or removed any part of his property since or within two months before the date of any unsatisfied judgment or order for payment of money obtained against him.

Section 24 enacts that warrants of attorney in any personal action, or cognovits, and orders of judgment, shall not be of any force unless executed in the presence of an attorney, who shall subscribe his name as witness to the due execution of the same.

Another act on the amendment of the Debtor Laws may be properly noticed in the present section. By the 32 and 33 V. c. 46, the distinction that existed as to priority of payment between specialty and simple contract debts of deceased persons is abolished. After January 1st, 1870, all specialty and simple contract debts are to stand in equal degree as to the payment of the debts of the deceased. The 33 & 34 V. c. 76, makes further provision for the arrest of absconding debtors.

II. COUNTY COURTS.

The ancient constitution of these courts has been adverted to (p. 57), and the dilatory and expensive nature of their proceedings. In 1846, county courts were made prompt and efficient for the *recovery of debts and demands*, by the 9 & 10 V. c. 95, amended by subsequent acts. Prior to the act of 1846, there were few courts of inferior jurisdiction in which debts above forty shillings could be recovered. The local courts that did exist in a few cities and towns, having proved serviceable both to plaintiff and defendant from the inexpensiveness of their proceedings, efforts have been made to extend the principle of them by the establishment of the county courts. The leading provisions of the 9 & 10 V. c. 95, will be briefly recapitulated, with the amendments introduced by 19 & 20 V. c. 108, and later statutes.

By 9 & 10 V. c. 95, the lord chancellor appoints the judges of the courts, each of whom is to be a barrister of seven years' standing. Judges removable by lord chancellor for inability, or their districts may be changed. Judges may continue to act as justices, if in the commission of the peace. Officers of the court not to act as attorney or agent in the same court. A court to be held within the district once at least in every calendar month; notice of the days on which held to be given in a conspicuous part of the court. Clerk of the court to receive plaints and issue summonses, and no misnomer or inaccurate description of any person or place to vitiate the same, so that person or place be described as correctly known. Matters of fact and law determined solely by the judge. If debt

exceed £5, a jury may be demanded by either plaintiff or defendant, or if it does not exceed £5, the judge may grant a jury trial. Under the order of the judge, and with consent of both parties, the issue may be settled by arbitration. If plaintiff does not appear, cause struck out; or if defendant is absent, cause to proceed as if present. Defendant may pay money into court, notice being given to plaintiff. The parties to the suit, their wives, or others may be examined. Penalty not exceeding £10 on any witness failing to attend where expenses have been tendered agreeably to the rules of the court. Judgment final unless debt exceed £5, and then only removable with the consent of a judge of the superior court. Execution may be awarded against goods. Wearing apparel, bedding, and implements of trade to the value of £5, cannot be taken in execution. Imprisonment not to operate as an extinguishment of the debt. Pending execution, landlords may claim arrears of rent not exceeding four weeks, if tenure be weekly, or two terms if tenure be under a year, but not exceeding one year's rent in any case. Payment of debt and costs to supersede execution, or debtor be discharged from custody. Possession of small tenements held over, and where the rent does not exceed £50 a year, may be recovered in the county courts.

The power of imprisonment under this act is limited by the 22 & 23 V. c. 57. If a party summoned under 9 & 10 V. c. 95, s. 98, shall not attend, or allege a sufficient excuse, the judge shall not order that such party be committed to prison, unless it appear that the party, if a defendant, in incurring the debt or liability for which judgment has been obtained, has obtained credit from the plaintiff under *false pretences*, or by means of *fraud or breach of trust*, or has wilfully contracted such debt or liability without having had at the time a reasonable expectation of being able to pay the same, or shall have made any gift, transfer of property, or have charged, removed, or concealed the same with intent to defraud his creditors, or has then, or has had since the judgment obtained against him, sufficient means to pay the debt or damages or costs so recovered against him, either altogether or by any instalment which the court, in which the judgment was obtained, shall have ordered, and shall have refused or neglected to pay the same.

By the act of 1850, the 13 & 14 V. c. 61, the jurisdiction of county courts is extended from £20 to the recovery of any debt, damage, or demand, not exceeding the sum of £50.

In respect of actions in the superior courts for demands within the jurisdiction of the county court, it is enacted that plaintiffs recovering in the superior courts sums not exceeding £20 in actions of contract, or £5 in actions of tort, shall have no costs. But judges on the trial may certify to entitle plaintiff to his costs, or the court or a judge at chambers may make an order that plaintiff have costs. The practical effect of these clauses is to give a concurrent

jurisdiction above £20 to the superior courts in actions of contract, and above £5 in actions of *ex delicto*.

By s. 17, it is enacted that if *both parties shall agree*, by a memorandum signed by them or their attorneys, the county court may try actions above £50; or any action in which the title to land, whether of freehold, copyhold, or leasehold, or other tenure, or any tithe, toll, market, fair, or other franchise shall be in question.

By the 19 & 20 V. c. 108, the County Court Acts were amended, except the provisions relating to framing a scale of costs, and making rules and order of practice. By s. 6, a deputy judge must be a barrister of seven years' standing, or be a judge of a county court. The clerk of the county court in future to be called the "registrar," and the registrar to be limited to one court. Power given to registrar same as judge, on application of plaintiff, to issue summons against defendant, residing out of jurisdiction of court, if cause of action has arisen within its jurisdiction. Summons may be served or warrant executed within 500 yards of the boundary of the district of the court. A judge may sue or be sued in any district adjoining that of which he is judge; or if any officer of the court be plaintiff in his own court, defendant may remove cause to an adjoining district. Power given to the judge to change the venue, if either party to a cause think it may be more fairly tried in some other county court, ss. 7-22.

By s. 23, county courts not to have jurisdiction in any action for criminal conversation; but with respect to all other actions, which may be brought in any superior court of common law, if both parties agree, by a memorandum signed by them or their respective attorneys, that any county court named in such memorandum shall have power to try such action, such county court shall have jurisdiction to try the same.

By s. 24, where in any action the debt or demand claimed consists of a balance not exceeding £50, after an admitted set-off, the court may try the action. Where title shall come in question, the court, with consent of the parties in writing, may decide the claim. Where, in an action brought in a superior court, the claim endorsed on the writ does not exceed £50, or where such claim, though it originally exceeded £50, is reduced by payment into court, payment, an admitted set-off, or otherwise, to a sum not exceeding £50, a judge of a superior court, on the application of either party, after issue joined, may, and on such terms as he shall think fit, order that the cause be tried in any county court which he shall name. If any action for debt or liquidated demand exceed £20, plaintiff may require defendant to give notice of intention to defend, on pain of judgment by default. If notice be given, action to be tried, and the registrar to inform plaintiff if notice has or has not been given, ss. 23-29. Costs of attorney in certain proceedings in county courts may be taxed by the registrar as between attorney

and client; or in certain proceedings as between party and party, ss. 34, 35.

By s. 45, where judgment has been obtained in a county court for a sum not exceeding £20, exclusive of costs, the judge may order such sum and the costs to be paid at such times, and by such instalments, if any, as he shall think fit, and all such moneys shall be paid into court; but in all other cases he shall order the full amount for which judgment has been obtained to be paid either forthwith, or within fourteen clear days from the date of the judgment, unless the plaintiff, or agent, will consent that the same shall be paid by instalments, in which case the judge shall order the same to be paid at such times, and by such instalments, if any, as shall be consented to, and all such moneys, whether payable in one sum or by instalments, shall be paid into court.

By s. 50, the possession of *small tenements* may be recovered in county courts by landlords, where neither the value of the premises, nor the rent payable, exceeds £50, if the term of holding has expired, or been determined by notice. Possession may be recovered if rent does not exceed £50, if one half-year's rent be in arrear.

By s. 62, the bankruptcy or insolvency of the plaintiff in any action in a county court, which the assignees might maintain for the benefit of the creditors, shall not cause the action to abate if the assignees shall elect to continue such action, and to give security for the costs, within such reasonable time as the judge shall order, but the hearing of the cause may be adjourned until such election is made; and in case the assignees do not elect to continue the action, and give security within the time limited by the order, the defendant may avail himself of the bankruptcy or insolvency as a defence to the action.

Bankruptcy Petition.—An important enlargement was made in the powers of county courts in 1861, by the 24 & 25 V. c. 134. By s. 3 of this act, county courts, for the first time, obtained jurisdiction in bankruptcy. They have jurisdiction in all cases where a creditor makes himself bankrupt, and states, on filing his petition, that his debts do not exceed £300: in which case he is to file his petition in the county court of the district in which he has resided for the last six months, or the longest period of the six months. If in custody, he is to file his petition in the county court of the district in which he is in custody. By s. 88, the Bankruptcy Court in London may transfer any petition for adjudication in bankruptcy, judgment-debtor summons, or the proceedings from any district court to a county court, not being within the metropolitan district of twenty miles from the General Post-office.

In 1869, the 32 & 33 V. c. 71, conferred on county courts, except in London, a general bankruptcy jurisdiction.

By s. 4 of an act of 1862, the prohibition is renewed, that no judge of a county court, while holding office, shall be capable of election, or of sitting as a member of the House of Commons.

Under 28 & 29 V. c. 99; 30 & 31 V. c. 142, and 31 & 32 V. c. 40, county courts have a chancery jurisdiction in many matters of equity to the value of £500.

By 30 & 31 V. c. 142, a plaint may be entered in the county court within the district of which the defendant or one of the defendants shall dwell or carry on his business at the time of bringing the action or suit, or it may be entered, by leave of the judge or registrar, in the county court within the district of which the defendant or one of the defendants dwelt or carried on business at any time within six calendar months next before the time of action or suit brought, or, with the like leave, in the county court in the district in which the cause of action or suit wholly or in part arose.

By s. 2, in any action brought in a county court for the price or value of goods or chattels which, or some part of which, were sold and delivered to the defendant to be dealt with in the way of his trade, profession, or calling, the plaintiff may, at his option, cause issue of summons, and if defendant shall not give notice of intention to defend, judgment may be entered up.

By s. 4, no action can be brought or maintainable in any court to recover any debt or sum of money alleged to be due in respect of the sale of any ale, porter, beer, cider, or perry which is consumed on the premises where sold or supplied, or in respect of any money or goods lent or supplied, or of any security given for, in, or towards the obtaining of any such ale, porter, beer, cider, or perry.

City of London and Metropolis.—The act of 1852, for the recovery of debts in the city of London and its liberties, comprises some of the principal provisions of the county court acts. Actions may be commenced for sums amounting to £50, and, in cases where the parties agree, actions beyond that amount may be tried. The judge of the sheriff's court is to preside, and the court is to be holden at Guildhall, or where the corporation shall direct. The act provides also for the performance of the duties of clerks, bailiffs and other officers connected with the court. The officers may be paid by salaries instead of fees. A prison may be provided for the purposes of the act, and money borrowed. All suits are to be by plaints. A jury of five may be summoned, when required by either party. As in the county court acts, an appeal is given to the superior courts on points of law, or the admission or rejection of evidence. Defendants may be summoned on unsatisfied judgments, and committed to prison, which imprisonment is not to operate in discharge of the debts. Among the powers conferred by the act in the city of London, is one to obtain possession of small tenements, where the tenants hold over, without bringing an action of ejectment. The fees to be charged are set forth in a schedule annexed to the act.

By 19 & 20 V. c. 108, s. 18, the districts of the courts in the metropolis are to be treated as *one district*, and the summons may issue and be served either *in the district* in which the plaintiff may

...in the Mayor's Court, the Exchequer
H...h Court of Judicature Act, 1873, the High
...r the 1st of November, 1873 is to be the cou
purposes of the act. By s. 5, the parties in any
attachment may, after issue joined by consent, a
the court, state the facts of the case in the form o
the opinion of the court or of any one of the su
may agree that judgment shall be entered thereon
think fit. By s. 7, the registrar of the court, up
of an office copy of the rule of the superior court, m
such special case, shall enter judgment in the co
with the decision of the superior court.

By s. 8, if either party to any cause in which t
be recovered exceeds £20 is dissatisfied with the de
in point of law, or upon the admission or rejectio
such party may appeal to any one of the superio
of intention to appeal must be given to the opp
attorney within two days of such decision, and se
the appeal, whatever may be the event, must al
approved of by the registrar of the court. Such
in the form of a case agreed on by both parties, o
not being able to agree, by the judge, who in s
it, s. 9.

Where the debt or damage claimed in any acti
£50, no plea to the jurisdiction is allowed if the
of the defendants dwell or carry on business
London or the liberties, or has done so within
before the time of the action brought, or if th

out of the court into Chancery without the special order of the Lord Chancellor, Master of the Rolls, or one of the Vice-Chancellors, upon application for that purpose made, and no cause is to be so removed if the judge considers the matter in question fit to be tried by the Mayor's Court.

By s. 21, in any action or legal proceeding in the court, the court may, on application by either party, compel the opposite party to allow such party to inspect all documents in the custody or power, or under the control of such opposite party relating to such action or proceeding, and, if necessary, to take examined copies of the same, and to procure the same to be duly stamped in all cases in which a discovery might have been obtained in equity.

By s. 23, the court may at all times amend all defects and errors in any proceeding whether there is anything in writing to amend by or not, and whether the defect or error be that of the party applying to amend or not, and all such amendments as may be necessary shall be so made, and with or without costs, or upon such terms as the court may think fit.

By s. 24, the court may, in any action upon the application of any of the parties, order the examination on oath, upon interrogatories or otherwise, before the registrar or other person or persons named in the order, of any witness in any part of England and Wales, and may give all necessary directions touching the time, place, and manner of examination, and other matters connected therewith.

Ss. 25-30 deal with other matters connected with the obtaining evidence, and the costs of and compelling the attendance of witnesses.

By s. 36, in every case where judgment has been signed in the court against any person for any debt not exceeding £20 exclusive of costs, or where any person is indebted to any other in a sum not exceeding £20 by virtue of any judgment or order, the court may, upon application in the form contained in a schedule to the act, grant a summons according to a form contained in another schedule, and if the debtor appear according to such summons, he may be interrogated, as also the creditor, in the manner already mentioned on p. 501 as having been prescribed under 8 & 9 V. c. 127, and the debtor can be imprisoned similarly. Every person who is entitled to sign judgment in the court, where the amount of the debt does not exceed £20, may previously to signing such judgment give notice to the person against whom such judgment may be signed, and the court may, upon judgment being signed, have the like power of hearing the parties and making such order for payment or committal, as in the cases already stated on p. 501.

When an order for commitment has been made under the act, and the person against whom such order of commitment has issued is out of the jurisdiction of the court, it is lawful for the officer charged with the execution *of such order* of commitment to take

the person against whom such order has issued wherever he may be. In every case in which judgment has been obtained in the court, or order made for a sum not exceeding £20 exclusive of costs, the registrar, either during the sitting of the court or out of court, may hear the parties, and grant an order for the payment of the amount of the judgment or order and costs by instalments or otherwise, or may issue an order of committal as in the former cases. By the Debtor's Act, 1869, 32 & 33 V. c. 62, s. 29, it is provided that nothing in the act contained shall affect the custom of foreign attachment as exercised by any competent court, or the proceedings in relation to such custom.

IV. ARREST OF ABSCONDING DEBTORS.

The preamble to Lord Harrowby's act for this purpose, 14 & 15 V. c. 52, states that the laws in force are too dilatory, that frauds are perpetrated on creditors residing at a distance from London, by debtors embarking for distant countries from various seaports, and that it is expedient to provide a more efficacious process for the arrest of debtors about to quit England. It then enacts, by s. 1, that after August 1, 1851, the commissioners of bankruptcy and judges of county courts, except the county court judges of Middlesex and Surrey, may, on the application of a creditor and due proof of affidavit that a debt of *twenty pounds* or *upwards* is owing and then payable, and that there is probable cause for believing that the debtor, unless he be apprehended, is about to leave England, grant a warrant in the prescribed form for the arrest of the debtor within seven days from the date thereof. Such arrest to continue till the debtor has given bail or made a deposit, or paid the debt and costs endorsed on the warrant, or be otherwise legally discharged. Creditor taking out such warrant must issue a writ of *capias*, or, where no action is pending, first cause a writ of summons to issue out of a superior court, and the ordinary process follows, notwithstanding the defendant's arrest: *capias* must be served within seven days from the date of arrest warrant.

This act was repealed by 32 and 33 V. c. 83, and the arrest of absconding debtors is now regulated by the Bankruptcy Act, 1869, and the Absconding Debtors Act, 1870. The latter act provides that the court of bankruptcy may, by warrant addressed to any constable or prescribed officer of the court, cause a debtor to be arrested, and safely kept as prescribed until such time as the court may order, if, after a debtor's summons has been granted in the manner prescribed by the act of 1869, and before a petition of bankruptcy can be presented against him, it appear to the court that there is probable reason for believing

s is about to go abroad, with a view of avoiding payment debt for which the summons has been granted, or of avoid- rice of a petition of bankruptcy, or of avoiding appearing to tition, or of avoiding examination in respect of his affairs, rwise avoiding, delaying, or embarrassing proceedings in ptcy: provided always, that nothing shall be construed to qualify the right of the debtor to apply to the court in the ed manner to dismiss the summons as in the act is provided, ay, secure, or compound for the debt within the time by the vided, without being deemed to have committed an act of ptcy.

2, no arrest to be valid or protected under this act, unless tor, before or at the time of his arrest, shall be served with tor's summons.

V. RECOVERY OF DEBTS ABROAD.

generally believed that persons who quit this country to he payment of their debts, may reside in France with im- conceiving that the French tribunals take cognizance of no etween persons not subjects of France. This notion is so , that when a debtor is known to be in France, the creditor s all attempt to enforce his demand, believing himself to be remedy. It is important to be known, that the notion s so generally entertained on this subject is erroneous, as us instances have occurred where parties living in England ompelled the payment of debts by debtors living in France. le of the French law still holds, that a foreigner shall not l another foreigner before the French tribunals, unless there n some *decree or judgment of a court declaratory of the f the claimant;* but it is now well established that when a nt or decree has been obtained in any court in England, the courts will carry into effect the judgment or decree so d in England.

ill be understood that the difficulty of enforcing a debt still where the debtor has escaped before a proceeding could be n this country against him; but after a debtor has once been with process here. and a judgment obtained here, a French ill give the same effect to the judgment as an English ld if the party were in England.

er the same circumstances, of antecedent process and judg- n England, it is believed that the laws of Belgium would give ne assistance against an English debtor residing in Belgium.

CHAPTER XV.

Liens.

A LIEN may be defined a right which one person has to detain the property of another on account of labour expended on that property, or for the general balance of an account due from the owner.

As the common law imposes on certain trades, as innkeepers and carriers, the obligation of accepting all employment offered within the limits of their occupation, so, in return for this obligation, it entitles the party to a particular lien on the property as a remuneration for the expense and trouble incurred in the execution of the purpose for which such property was entrusted. But the general opinion appears to be, that the right of lien is not confined to those trades which are under an obligation to accept employment from all who offer it; but that the remedy by detention extends to every trade exercised for the benefit and advantage of the community.

Attorneys and solicitors have a lien for their costs on the papers of their clients; bankers, upon all securities in the way of trade: brokers, factors, and agents, on the property of their principals in possession, or even in the hands of purchasers; masters of vessels, on their cargoes, for wages or necessary repairs, during the voyage; carriers have a lien for the carriage price; innkeepers on the goods and property of their guests, for their food and lodging, and on their horses, for their keeping and stabling; insurance brokers have a lien for the general balance of their account on the policies effected by them for their principals; lastly, millers, packers, wharfingers, dyers, coach-makers, calico-printers, and others, have all a lien on the goods respectively confided to them in the way of business.

But as the right of lien is admitted for the benefit of trade, it is confined in its operations to trade only. Therefore no lien lies for the pasture of cattle, or the keep of the dog; or where there has been a special agreement to pay a certain sum for workmanship, in which case the owner of the goods on which the labour has been bestowed can only be made *personally* liable.

A right of lien gives no general right to *sell goods*, except where the detention of goods is creative of expense, when the lien is saleable. In case, too, of the lien on cattle, it is admitted that they may be worked as the owner would have worked them; so also a cow may be milked.

Under the following circumstances the right of lien cannot be exercised:—1. If the possession of property has been obtained wrongfully or by misrepresentation. 2. If it has been entrusted solely on the *personal* credit of the owner of the lien, or delivered

thorized servant or agent. 3. And lastly, no lien can be over property delivered by a bankrupt, or one in contem- f bankruptcy. It is also material to remark, that if the goods accept a specific security in lieu, or voluntarily part possession of the whole, or part of them, he afterwards right of lien upon them.

CHAPTER XVI.

Bankruptcy and Insolvency.

UPT is a trader who, either from the want of sufficient or from the pressing difficulty of converting what he pos- o money, is unable to meet those demands of his creditors e law gives them the power of enforcing, and who has c m- me act indicative of the situation in which he is so placed. he latter attribute that the bankrupt has been held chiefly from an insolvent, who may, equally with a bankrupt, be meet the demands upon him, but who has not, by secret- lf from creditors, or other open evasive act, revealed his y to the world. But under the Bankruptcy Act of 1861 erseded by the act of 1869) the legal distinctions between and insolvent disappeared, and both description of in respect of procedure, became amenable to the same on.

ordinary course of law, creditors may seize either the the effects of their debtor, but they cannot take both at time, and if they take the body in execution, they cannot ls resort to the effects. All the creditors must run through process to recover their several debts. By the bankrupt the contrary, a form of proceeding is allowed, at the in- one or more of a man's creditors, at the common expense, he common benefit of them all. The debtor is at once, by of law, divested of all his property, real and personal, transferred to trustees either chosen by his creditors or by law. But if the debtor make a full discovery, and have acted without fraud, he then becomes entitled to a discharge, both of his person and generally of any pro- may subsequently acquire; and also to a reasonable out of his former effects proportioned to his good con- the amount of the dividend which his estate yields to his

years the bankrupt laws have undergone much inquiry ssion, and attempts have been made to improve this com- ranch of mercantile jurisprudence. So early as 1825 the s of statutes on the *subject* had been consolidated, and

veral new and salutary provisions introduced; among other
hat which allowed the proof of contingent debts; that whi
llowed all debts to bear interest in the event of a surplus; t
which allowed the tender of a composition; and that which allo
a trader in insolvent circumstances publicly to declare it, whe
steps might be taken to secure an equitable distribution of
property to all his creditors.

In 1831 was introduced the 1 & 2 W. 4, c. 56, for lessenin
expense, delay, and uncertainty in bankruptcy proceedings.
act established a court of bankruptcy, by abolishing the se
commissioners of bankrupts, and the substitution of ten jud
their places, with registrars, clerks, &c. Various other alte
of importance were adopted. 1. The substitution of a fi
the lord chancellor, in lieu of the petition of bankruptcy.
appointment of official assignees of the bankrupt's estate.
allowing of all attorneys and solicitors to practise in the Ban
Court, and debts to be proved by affidavit. 4. The appo
of fixed commissioners, on the nomination of the judges
to adjudicate bankruptcy business in the country. And 5,
assignees to employ the bankrupt in the arrangement of t
and refer any matter to arbitration, and the reference b
be made a rule of court.

Despite of these and numerous subsequent amendin
the bankrupt laws proved wholly inadequate to the due
of mercantile credit, and by secret transfers, conceal
perty, or other fraudulent devices, the chief bulk of the
effects continued to vanish from the grasp of the law
quence the subject was again urgently pressed on the
the legislature by the higher classes of the commerci
the result, after anxious and protracted inquiry, w
1849, the 12 & 13 V. c. 106. The improvements
this act were many and important, and may be br
lated.

First, the simplification of the process in bankru
tuting a petition for a fiat. Secondly, a saving o
pense, to be effected by conferring upon the commi
jurisdiction in certain matters that had been only c
of the vice-chancellors sitting at Lincoln's Inn.
ful clauses facilitating the winding-up of insolve
court. Fourthly, a classification was introduce
cases of commercial delinquency, and of awardin
tificates of desert and conformity.

For the first time, a broad distinction was dra
honest and fraudulent debtors. Traders who,
of their insolvency, place their affairs before
obtain their assent to such propositions as the
can obtain protection for their p rsons, and
affairs, either by trustees, without the interfer

under control of the court with the aid of an official assignee, but in either case *without the stigma of bankruptcy;* but, if bankruptcy cannot be avoided, then, after hearing the case, and judging of the conduct of the bankrupt during his examinations, it was left to the commissioner of the court to grant either a *first-class* certificate, which declared that the trader's inability to pay his debts had arisen from misfortune only, or a *second-class* certificate, in which it was declared to have arisen partly from misfortune: or a *third-class*, in which it was declared not to have arisen from misfortune. These discriminations of the debtor's conduct appeared at the time of greater importance to society and the morality of trade than any other portion of the act.

Subsequently Lord Chancellor Westbury, while attorney-general, sought to provide a useful digest and improvement of the jurisprudence and administration of insolvency. It failed to be carried in its original scope, but resulted in the act of August 6, 1861, to amend the law relating to bankruptcy and insolvency in England. This act, the 24 & 25 V. c. 134, was not a consolidating act, but retained much of previous legislation, and only partly repealed some of the statutes to which reference has been previously made.

The act commenced from and after October 11, 1861; it is to be construed, together with so much of the bankrupt acts of 1849 and 1854 as remain unrepealed, as one act, and be cited as the Bankruptcy Act of 1861.

One of the more prominent features of the act of 1861 was the bringing under the same judicature the previously divided administration of the laws of bankruptcy and insolvency. Besides the abolition of the Insolvent Court, except as to such functions of its judges as pertain to the carrying out and conclusion of pending business, the other important changes made and the *general principles* of the act may be thus described:—

First, to effect a more general, speedy, and economical administration of the insolvent laws. Secondly, and as a consequence of these improvements, to afford increased facilities for private arrangement, composition, and agreement between creditor and debtor. Thirdly, to bring about a gradual approximation to the abolition of the punishment of imprisonment as a means of satisfaction for debt; and, fourthly, to effect the issue already mentioned of an assimilation of the laws of insolvency and bankruptcy.

As to the *practical results* under the new administration, an important one was to vest the management of the debtor's property more in the hands of creditors and less in officials. Next, is the abolition of the distinction in bankruptcy between *traders* and *non-traders*. All persons of full age, male and female, peers and commoners, denizens and aliens, and natural-born subjects, except foreign ambassadors, become liable to the bankrupt law. Lunatics may be made bankrupt upon *an act committed* in a lucid in-

terval. Thirdly, the county courts, except those within the limits of the metropolis, had, for the first time, jurisdiction in bankruptcy, same as the district courts of bankruptcy. They had jurisdiction in all cases where a debtor made himself bankrupt and his debts did not exceed £300, and resided without the metropolitan district, the boundary of which included every parish within twenty miles of the General Post-office. The London Court of Bankruptcy had power to transfer any petition for adjudication from a district court to a county court, not being a metropolitan county court. Lastly, the classification of certificates as indicative of degrees of commercial delinquency, or conformity to bankrupt procedure, ceased. The act of 1861, however, was not found to work satisfactorily, and was consequently suspended by the Bankruptcy Act, 1869 (32 & 33 V. c. 71), which is now the governing statute on the subject.

II. INSOLVENCY.

Although bankruptcy and insolvency are now assimilated in jurisdiction, it may not be altogether irrelevant to describe the legal definition by which they had been divided.

By the term *insolvent* is generally meant a person that is not in a condition to pay his debts, in the ordinary course, as persons carrying on trade usually do, *Bayley* v. *Schofield*, 1 *M.* & *S.* 350. Between bankruptcy and insolvency the distinction that has been held is twofold. First, as to *persons*, the bankrupt being a trader, which an insolvent need not be. Secondly, as to *property*; for the bankrupt, after receiving his certificate, was discharged, not only as to his person, but as to his future acquired property, by which clearance he became eligible to resume trade and obtain credit afresh. The condition of the insolvent was essentially different, his person only being protected, not his after acquisitions. At the moment of his discharge he contracted a future liability to pay his debts, by a solemn instrument which he signed, and which the creditors had the power of enforcing ever after. The insolvent, though personally relieved by due process of law, when no fraud had been proved against him, continued still liable, to the latest period of his life, to pay his debts *in full*; the creditors reserving authority to compel the payment of their debts, when the insolvent was in a condition to liquidate them, by bringing him up from time to time before the court, which decided whether he was then able to pay his debts out of the property he had acquired.

III. PERSONS LIABLE TO BANKRUPTCY.

By s. 69 of the statute of 1861, all debtors, whether traders or *not*, became subject to bankruptcy, but no debtor *not* a trader was

liable to be adjudged bankrupt except in respect of certain *specified* acts. This distinction is continued by the act of 1869.

The term trader is generally applied to one who gains a livelihood by buying and selling, and who is capable of making binding contracts, whether a natural-born subject, alien, or denizen. The act of 1869 expressly enumerates as traders, alum-makers, apothecaries, auctioneers, bankers, bleachers, brokers, brickmakers, builders, calenderers, carpenters, carriers, cattle or sheep salesmen, coach proprietors, cowkeepers, dyers, fullers, keepers of inns, taverns, hotels, or coffee houses, lime burners, livery stable keepers, market gardeners, millers, packers, printers, sharebrokers, shipowners, shipwrights, stockbrokers, stockjobbers, victuallers, warehousemen, wharfingers, persons using the trade or profession of a scrivener, receiving other men's moneys or estates into their trust or custody, persons insuring ships or their freight or other matters against perils of the sea, persons using the trade of merchandize by way of bargaining, exchange, bartering, commission, consignment, or otherwise, in gross or by retail, and persons who, either for themselves or as agents or factors for others, seek their living by buying and selling or buying and letting for hire goods and commodities, or by the workmanship or the conversion of goods or commodities; but a farmer, grazier, common labourer or workman for hire, or a member of any partnership, association, or company which cannot be adjudged bankrupt under the act, is not to be deemed as such a trader for the purposes of the act.

A party who lets furnished lodgings is not a trader within the bankrupt laws, notwithstanding he buys the furniture for the purpose of being let with the lodgings, 1 *Dea.* 99.

Attorneys have been made bankrupt as scriveners, but in the common course of their profession they cannot be made bankrupt. Nor the proprietor of a coal-mine, selling coals; nor of a stone-quarry, selling stones. Neither can any public officer, in respect of his office, be made bankrupt; nor one who buys or sells under particular restraint, as a schoolmaster who buys books to sell to his scholars, or a contractor for victualling the army.

A single act of buying or selling is not sufficient to bring a person under the bankrupt laws; whether a man be a trader, within the statute, is a question not of *fact* but of *law* upon the fact, *Cowp.* 572. A trading depends not upon the quantity, but the *intention;* and it is a question for a jury whether there be enough to evidence that intention.

By 9 Anne, c. 12, no trader within the bankrupt laws is exempt therefrom, by placing himself in the service of an ambassador or public minister.

A married woman, carrying on trade in the city of London, or carrying on business as a trader, her husband being a convict, may be adjudged a bank*rupt.*

IV. BANKRUPTCY OF JOINT-STOCK COMPANIES.

Joint-stock companies, whether with or without limited liability, are not liable to be adjudged bankrupt under the Bankruptcy Act, 1869, but provision has been made by the Companies Act, 1862, for winding up such companies when unable to meet their engagements, and generally whenever the Court of Chancery is of opinion that it is just and equitable that the company should be wound up. The winding up may either be voluntary on the part of the company, or compulsory by order of the Court of Chancery. The persons appointed to conduct the winding up are called liquidators, and they raise money to meet claims on the company by means of calls on the present or past members of the company who are made liable under the act to contribute thereunto. Section 38 of the act declares the liability of such members in the following terms:—In the event of a company formed under this act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves with the qualifications following (that is to say):—(1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up. (2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member. (3.) No past member shall be liable to contribute to the assets of the company, unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this act. (4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member. (5.) In the case of a company limited by guarantee, no contribution shall be required by any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association. (6.) Nothing in this act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract. (7.) No sum due to any member of a company in his character of a member by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company payable to such member in a case of competition between himself and any other creditor not being a member of the company; but any such sum may be taken into account for the

purposes of the final adjustment of the rights of the contributories amongst themselves.

V. THE BANKRUPTCY ACT, 1869.

We now come to consider the provisions of this important statute, by which the law on the subject was consolidated, the former acts having been repealed by another act of the same session. The Bankruptcy Act, 1869, is unusually terse and clear in its language, and it seems better, therefore, to give the more important sections and parts of sections at length, than merely to express their meaning in other words. These sections are as follows :—

ADJUDICATION.

6. A single creditor, or two or more creditors if the debt due to such single creditor, or the aggregate amount of debts due to such several creditors, from any debtor, amount to a sum of not less than £50, may present a petition to the court, praying that the debtor be adjudged a bankrupt, and alleging as the grounds for such adjudication any one or more of the following acts or defaults, included under the expression "acts of bankruptcy :"—(1.) That the debtor has, in England or elsewhere, made a conveyance or assignment of his property to a trustee or trustees for the benefit of his creditors generally. (2.) That the debtor has, in England or elsewhere, made a fraudulent conveyance, gift, delivery, or transfer of his property or of any part thereof. (3.) That the debtor has, with intent to defeat or delay his creditors, done any of the following things, namely, departed out of England, or being out of England remained out of England ; or being a trader departed from his dwelling-house, or otherwise absented himself ; or begun to keep house ; or suffered himself to be outlawed. (4.) That the debtor has filed in the prescribed manner in the court a declaration admitting his inability to pay his debts. (5.) That execution issued against the debtor on any legal process, for the purpose of obtaining payment of not less than £50, has in the case of a trader been levied by seizure and sale of his goods. (6.) That the creditor presenting the petition has served in the prescribed manner on the debtor a debtor's summons requiring the debtor to pay a sum due, of an amount of not less than £50, and the debtor being a trader has for the space of seven days, or not being a trader has for the space of three weeks, succeeding the service of such summons, neglected to pay such sum, or to secure or compound for the same. But no person shall be adjudged a bankrupt on any of the above grounds unless the act of bankruptcy on which the adjudication is grounded has occurred within six months before the presentation of the petition for adjudication ; moreover, the debt of the petitioning creditor must be a liquidated sum due at law or in equity, and must not be a secured *debt, unless* the petitioner state in his

petition that he will be ready to give up such security for the benefit of the creditors in the event of the debtor being adjudicated a bankrupt, or unless the petitioner is willing to give an estimate of the value of his security, in which latter case he may be admitted as a petitioning creditor to the extent of the balance of the debt due to him after deducting the value so estimated, but he shall, on an application being made by the trustee within the prescribed time after the date of adjudication, give up his security to such trustee for the benefit of the creditors upon payment of such estimated value.

7. A debtor's summons may be granted by the court on a creditor proving to its satisfaction that a debt sufficient to support a petition in bankruptcy is due to him from the person against whom the summons is sought, and that the creditor has failed to obtain payment of his debt, after using reasonable efforts to do so. The summons shall be in the prescribed form, resembling, as nearly as circumstances admit, a writ issued by one of her Majesty's superior courts. It shall state that in the event of the debtor failing to pay the sum specified in the summons, or to compound for the same to the satisfaction of the creditor, a petition may be presented against him, praying that he may be adjudged a bankrupt. The summons shall have an endorsement thereon to the like effect, or such other prescribed endorsement as may be best calculated to indicate to the debtor the nature of the document served upon him, and the consequences of inattention to the requisitions therein made. Any debtor served with a debtor's summons may apply to the court, in the prescribed manner and within the prescribed time, to dismiss such summons, on the ground that he is not indebted to the creditor serving such summons, or that he is not indebted to such amount as will justify such creditor in presenting a bankruptcy petition against him; and the court may dismiss the summons, with or without costs, if satisfied with the allegations made by the debtor, or it may, upon such security (if any) being given as the court may require for payment to the creditor of the debt alleged by him to be due, and the costs of establishing such debt, stay all proceedings on the summons for such time as will be required for the trial of the question relating to such debt: Provided that, when the summons shall have issued from the London Court of Bankruptcy, such trial shall be had either before such court or before any other court of competent jurisdiction, and when the summons shall have issued from a county court, before such court in all cases in which it has now jurisdiction, and in all other cases before some competent tribunal.

8. A petition praying that a debtor may be adjudged a bankrupt, in this act referred to as a bankruptcy petition, shall be served in the prescribed manner. At the hearing the court shall require proof of the debt of the petitioning creditor, and of the trading, if necessary, and of the act of bankruptcy, or, if more

an one act of bankruptcy is alleged in the petition, of some one the alleged acts of bankruptcy, and, if satisfied with such proof, all adjudge the debtor to be bankrupt. The court may adjourn e petition, either conditionally or unconditionally, for the proement of further evidence, or for any other just cause, or may ismiss the petition, with or without costs, as the court thinks just.

9. Where the debtor appears on the petition, and denies that e is indebted to the petitioner, or that he is indebted to such mount as would justify the petitioner in presenting a bankruptcy etition against him, the court, upon such security (if any) being iven as the court may require, for payment to the petitioner of ny debt which may be established against him in due course of aw, and of the costs of establishing such debt, may stay all proeedings on the petition for such time as may be required for trial f the question relating to such debt, and such trial shall be had manner hereinbefore provided with respect to disputed debts nder debtors' summonses. Where proceedings are stayed the ourt may, if by reason of the delay caused by such stay of proeedings, or for any other cause it thinks just, adjudge the debtor bankrupt on the petition of some other creditor, and shall thereupon dismiss, upon such terms as it thinks just, the petition proeedings in which have been stayed as aforesaid.

12. When a debtor shall be adjudicated a bankrupt, no creditor to whom the bankrupt is indebted in respect of any debt provable in the bankruptcy, shall have any remedy against the property or person of the bankrupt, in respect of such debt, except in manner directed by the act. But this section shall not affect the power of any creditor holding a security upon the property of the bankrupt to realize or otherwise deal with such security, in the same manner as he would have been entitled to realize or deal with the same if this section had not been passed.

The court may, at any time after the presentation of a bankruptcy petition against the debtor, restrain further proceedings in any action, suit, execution, or other legal process against the debtor in respect of any debt provable in bankruptcy, or it may allow such proceedings, whether in progress at the commencement of the bankruptcy or commenced during its continuance, to proceed upon such terms as the court may think just. The court may also, at any time after the presentation of such petition, appoint a receiver and manager of the property or business of the debtor against whom the petition is presented, or of any part thereof, and may direct immediate possession to be taken of such property or business, or of any part thereof.

APPOINTMENT OF TRUSTEE.

14. When an order has been made adjud*ging* a debtor a bankrupt, called an order of adj*udication*, *the property* of the bankrupt

becomes divisible amongst his creditors in proportion to the debts proved by them in the bankruptcy; and for the purpose of effecting such division the court shall, as soon as may be, summon a general meeting of his creditors, and the creditors assembled at such meeting shall and may do as follows:—1. They shall, by resolution appoint some fit person, whether a creditor or not, to fill the office of trustee of the property of the bankrupt, at such remuneration as they may from time to time determine, if any: or they may resolve to leave his appointment to the committee of inspection hereinafter mentioned. 2. They shall, when they appoint a trustee, by resolution declare what security is to be given, and to whom, by the person so appointed, before he enters on the office of trustee. 3. They shall, by resolution, appoint some other fit persons, not exceeding five in number, and being creditors qualified to vote at such first meeting of creditors as is in this act mentioned, or authorized in the prescribed form by creditors so qualified to vote, to form a committee of inspection for the purpose of superintending the administration by the trustee of the bankrupt's property. 4. They may, by resolution, give directions as to the manner in which the property is to be administered by the trustee, and it shall be the duty of the trustee to conform to such directions, unless the court for some just cause otherwise orders.

15. The property of the bankrupt divisible amongst his creditors, shall not comprise the following particulars:—1. Property held by the bankrupt on trust for any other person. 2. The tools (if any) of his trade, and the necessary wearing apparel and bedding of himself, his wife and children, to a value, inclusive of tools and apparel and bedding, not exceeding twenty pounds in the whole. But it shall comprise the following particulars:—3. All such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy, or may be acquired by or devolve on him during its continuance. 4. The capacity to exercise and to take proceedings for exercising all such powers in or over or in respect of property as might have been exercised by the bankrupt for his own benefit at the commencement of his bankruptcy or during its continuance, except the right of nomination to a vacant ecclesiastical benefice. 5. All goods and chattels being, at the commencement of the bankruptcy, in the possession, order, or disposition of the bankrupt, being a trader, by the consent and permission of the true owner, of which goods and chattels the bankrupt is reputed owner, or of which he has taken upon himself the sale or disposition as owner; provided that things in action, other than debts due to him in the course of his trade or business, shall not be deemed goods and chattels within the meaning of this clause.

16. The general meeting of creditors to be summoned as aforesaid by the court, shall be held in the prescribed manner, and subject to the prescribed regulations as to the quorum, adjourn-

meeting, and all other matters relating to the conduct of ting or the proceedings thereat. Provided that:—1. The shall be presided over by the registrar, or, in the event being unable to attend through illness or any unavoidable y such chairman as the meeting may elect. 2. A person t be entitled to vote as a creditor unless at or previously to ting he has, in the prescribed manner, proved a debt under the bankruptcy to be due to him. 3. A creditor t vote at the said meeting in respect of any unliquidated ngent debt, or any debt the value of which is not ascer- 4. A secured creditor shall, for the purpose of voting, ed to be a creditor only in respect of the balance (if any) him after deducting the value of his security: and the of such balance shall, until the security be realized, be ued in the prescribed manner. He may, however, at or ily to the meeting of creditors, give up the security to the and thereupon he shall rank as a creditor in respect of le sum due to him. 5. A "secured creditor" shall in mean any creditor holding any mortgage, charge, or lien bankrupt's estate, or any part thereof, as security for a to him. 6. Votes may be given either personally or by 7. An ordinary resolution shall be decided by a majority of the creditors present, personally or by proxy, at the and voting on such resolution. 8. A special resolution decided by a majority in number, and three-fourths in f the creditors present, personally or by proxy, at the and voting on such resolution.

AL PROVISIONS AFFECTING ADMINISTRATION OF PROPERTY.

The bankrupt shall, to the utmost of his power, aid in the on of his property, and the distribution of the proceeds his creditors. He shall produce a statement of his affairs rst meeting of creditors, and shall be publicly examined on a day to be named by the court, and subject to such d public examination as the court may direct. He shall a inventory of his property, such list of his creditors and and of the debts due to and from them respectively, sub- uch examination in respect of his property or his creditors, uch meetings of his creditors, wait at such times on the execute such powers of attorney, conveyances, deeds, and nts, and generally do all such acts and things in relation roperty and the distribution of the proceeds amongst his , as may be reasonably required by the trustee, or may ribed by rules of court, or be directed by the court by any rder or orders made in reference to any particular bank- or made on the *occasion* of any special application by the

trustee or any creditor. If the bankrupt wilfully fail to perform the duties imposed on him by this section, or if he fail to deliver up possession to the trustee of any part of his property which is divisible amongst his creditors under this act, and which may for the time being be in the possession or under the control of such bankrupt, he shall, in addition to any other punishment to which he may be subject, be guilty of a contempt of court, and may be punished accordingly.

20. The trustee shall, in the administration of the property of the bankrupt, and in the distribution thereof amongst his creditors, have regard to any directions that may be given by resolution of the creditors at any general meeting, or by the committee of inspection, and any directions so given by the creditors at any general meeting shall be deemed to override any directions given by the committee of inspection; the trustee shall call a meeting of the committee of inspection once at least every three months, when they shall audit his accounts, and determine whether any or what dividend is to be paid; he may also call special meetings of the said committee as he thinks necessary. Subject to the provisions of this act, and to such directions as aforesaid, the trustee shall exercise his own discretion in the management of the estate, and its distribution amongst the creditors. The trustee may, from time to time, summon general meetings of the creditors for the purpose of ascertaining their wishes; he may also apply to the court, in manner prescribed, for directions in relation to any particular matter arising under the bankruptcy. The bankrupt, or any creditor, debtor, or other person aggrieved by any act of the trustee, may apply to the court, and the court may confirm, reverse, or modify the act complained of, and make such order in the premises as it thinks just. The court may, from time to time during the continuance of a bankruptcy, summon general meetings of the creditors for the purpose of ascertaining their wishes, and may, if the court thinks fit, direct the registrar to preside at such meetings.

21. The provisions of this act with respect to the first general meeting of creditors shall apply to any subsequent general meeting of creditors in a bankruptcy, with this exception, that subsequent meetings of creditors may be summoned by the trustee, or by a member of the committee of inspection, and that such meeting may, unless otherwise directed by the court, in case of meetings summoned by the court, be presided over by any person chosen by the creditors assembled at such meeting, and that any creditor whose debt has been proved, or the value of whose debt has been ascertained at or subsequently to such first meeting, shall be allowed to be present and to vote thereat.

DEALINGS WITH BANKRUPTS' PROPERTY.

'here any portion of the property of the bankrupt consists , shares in ships, shares, or any other property transfer- he books of any company, office, or person, the right to such property shall be absolutely vested in the trustee to e extent as the bankrupt might have exercised the same if not become bankrupt. Where any portion of such estate of copyhold or customary property, or any like property by surrender and admittance or in any similar manner, tee shall not be compellable to be admitted to such pro- ut may deal with the same in the same manner as if such had been capable of being and had been duly surrendered rwise conveyed to such uses as the trustee may appoint; appointee of the trustee shall be admitted or otherwise with the property accordingly. Where any portion of the r of the bankrupt consists of things in action, any action, other proceeding for the recovery of such things instituted rustee, shall be instituted in his official name, as in this vided; and such things shall, for the purpose of such suit, or other proceeding, be deemed to be assignable in l to have been duly assigned to the trustee in his official . The trustee shall, as soon as may be, take possession of ls, books, and documents of the bankrupt, and all other y capable of manual delivery. The trustee shall keep, in nner as rules of court shall direct, proper books, in which l, from time to time, make or cause to be made entries or of proceedings at meetings, and of such other matters as court shall direct, and any creditor of the bankrupt may, to the control of the court, personally or by his agent such books.

When any property of the bankrupt acquired by the trustee his act consists of land of any tenure burdened with onerous its, of unmarketable shares in companies, of unprofitable ts, or of any other property that is unsaleable, or not seleable, by reason of its binding the possessor thereof to formance of any onerous act, or to the payment of any sum ey, the trustee, notwithstanding he has endeavoured to sell, taken possession of such property or exercised any act of ip in relation thereto, may, by writing under his hand, such property, and upon the execution of such disclaimer perty disclaimed shall, if the same is a contract, be deemed letermined from the date of the order of adjudication, and ame is a lease be deemed to have been surrendered on the te, and if the same be shares in any company be deemed rfeited from that date, and if any other species of property revert to the person entitled on the determination of the r interest of the bankrupt, but if there shall be no person

in existence so entitled, then in no case shall any estate or interest therein remain in the bankrupt. Any person interested in any disclaimed property may apply to the court, and the court may, upon such application, order possession of the disclaimed property to be delivered up to him, or make such other order as to the possession thereof as may be just. Any person injured by the operation of this section shall be deemed a creditor of the bankrupt to the extent of such injury, and may accordingly prove the same as a debt under the bankruptcy.

24. The trustee shall not be entitled to disclaim any property in pursuance of this act in cases where an application in writing has been made to him by any person interested in such property, requiring such trustee to decide whether he will disclaim or not, and the trustee has for a period of not less than twenty-eight days after the receipt of such application, or such further time as may be allowed by the court, declined or neglected to give notice whether he disclaims the same or not.

25. Subject to the provisions of this act, the trustee shall have power to do the following things:—(1.) To receive and decide upon proof of debts in the prescribed manner, and for such purpose to administer oaths. (2.) To carry on the business of the bankrupt so far as may be necessary for the beneficial winding up of the same. (3.) To bring or defend any action, suit, or other legal proceeding relating to the property of the bankrupt. (4.) To deal with any property to which the bankrupt is beneficially entitled as tenant in tail in the same manner as the bankrupt might have dealt with the same; and the ss. 56 to 73 (both inclusive) of the act of the session of the 3 & 4 W. 4, c. 74, "for the abolition of fines and recoveries, and for the substitution of more simple modes of assurance," shall extend and apply to proceedings in bankruptcy under this act as if those sections were here re-enacted and made applicable in terms to such proceedings. (5.) To exercise any powers, the capacity to exercise which is vested in him under this act, and to execute all powers of attorney, deeds, and other instruments expedient or necessary for the purpose of carrying into effect the provisions of this act. (6.) To sell all the property of the bankrupt (including the goodwill of the business, if any, and the book debts due or growing due to the bankrupt) by public auction or private contract, with power, if he thinks fit, to transfer the whole thereof to any person or company, or to sell the same in parcels. (7.) To give receipts for any money received by him, which receipt shall effectually discharge the person paying such moneys from all responsibility in respect of the application thereof. (8.) To prove rank, claim, and draw a dividend in the matter of the bankruptcy or sequestration of any debtor of the bankrupt.

26. The trustee may appoint the bankrupt himself to superintend the management of the property or of any part thereof, or to carry on the trade of the bankrupt (if any) for the benefit of the

s, and in any other respect to aid in administering the pro-
such manner and on such terms as the creditors direct.
The trustee may, with the sanction of the committee of
on, do all or any of the following things :—(1.) Mortgage
ge any part of the property of the bankrupt for the purpose
ng money for the payment of his debts. (2.) Refer any
to arbitration, compromise all debts, claims, and liabilities,
present or future, certain or contingent, liquidated or
dated, subsisting or supposed to subsist between the bank-
d any debtor or person who may have incurred any liability
ankrupt, upon the receipt of such sums, payable at such
nd generally upon such terms as may be agreed upon. (3.)
uch compromise or other arrangement as may be thought
nt with creditors, or persons claiming to be creditors, in
of any debts provable under the bankruptcy. (4.) Make
mpromise or other arrangement as may be thought expe-
ith respect to any claim arising out of or incidental to the
y of the bankrupt, made, or capable of being made on the
by any person or by the trustee on any person. (5.) To
n its existing form amongst the creditors, according to its
ed value, any property which from its peculiar nature or
pecial circumstances cannot advantageously be realized by
The sanction given for the purposes of this section may be
ral permission to do all or any of the above-mentioned
or a permission to do all or any of them in any specified
cases.

The trustee may, with the sanction of a special resolution
creditors assembled at any meeting of which notice has
ven specifying the object of such meeting, accept any com-
offered by the bankrupt, or assent to any general scheme
lement of the affairs of the bankrupt upon such terms as
thought expedient, and with or without a condition that
er of adjudication is to be annulled, subject nevertheless to
roval of the court, to be testified by the judge of the court
the instrument containing the terms of such composition
me, or embodying such terms in an order of the court.
the annulling the order of adjudication is made a condition
composition with the bankrupt, or of any general sch me
liquidation of his affairs, the court, if it approves of such
ition or general scheme, shall annul the adjudication on an
tion made by or on behalf of any person interested, and
udication shall be annulled from and after the date of the
nnulling the same. The provisions of any composition or
scheme made in pursuance of this act may be enforced by
irt, on a motion made in a summary manner by any person
ted, and any disobedience of the order of the court made
motion shall be deemed to be a contempt of court. The
al of the court shall be conclusive as to the validity of any

such composition or scheme, and it shall be binding on all creditors so far as relates to any debts due to them and prov under the bankruptcy.

29. A trustee shall not, without the consent of the committ inspection, employ a solicitor or other agent, but where the tr is himself a solicitor he may contract to be paid a certain su way of per-centage or otherwise as a remuneration for his ser as trustee, including all professional services, and any such con shall, notwithstanding any law to the contrary, be lawful.

30. The trustee shall pay all sums from time to time rec by him into such bank as the majority of the creditors in nu and value at any general meeting shall appoint, and failing appointment, into the Bank of England; and if he at any time in his hands any sum exceeding £50 for more than ten day shall be subject to the following liabilities; that is to say:- He shall pay interest at the rate of £20 per centum per annu the excess of such sum above £50 as he may retain in his h (2.) Unless he can prove to the satisfaction of the court tha reason for retaining the money was sufficient, he shall, on application of any creditor, be dismissed from his office b court, and shall have no claim for remuneration, and be liab any expenses to which the creditors may be put by or in c quence of his dismissal.

PAYMENT OF DEBTS AND DISTRIBUTION OF ASSETS.

31. Demands in the nature of unliquidated damages ar otherwise than by reason of a contract or promise shall n provable in bankruptcy, and no person having notice of any a bankruptcy available for adjudication against the bankrupt prove for any debt or liability contracted by the bankrupt sequently to the date of his so having notice. Save as afore all debts and liabilities, present or future, certain or contin to which the bankrupt is subject at the date of the orde adjudication, or to which he may become subject during the tinuance of the bankruptcy, by reason of any obligation incu previously to the date of the order of adjudication, shall be dee to be debts provable in bankruptcy, and may be proved in prescribed manner before the trustee in the bankruptcy. estimate shall be made, according to the rules of the court for time being in force, so far as the same may be applicable, where they are not applicable at the discretion of the trustee the value of any debt or liability provable as aforesaid, which of its being subject to any contingency or contingencies, other reason, does not bear a certain value.

The debts hereinafter mentioned shall be paid in prio other debts. Between themselves such debts shall r , and shall be paid in full, unless the property of the ba

rupt is insufficient to meet them, in which case they shall abate in equal proportions between themselves; that is to say:—(1.) All parochial or other local rates due from him at the date of the order of adjudication, and having become due and payable within twelve months next before such time, all assessed taxes, land tax, and property or income tax assessed on him up to the 5th day of April next before the date of the order of adjudication, and not exceeding in the whole one year's assessment. (2.) All wages or salary of any clerk or servant in the employment of the bankrupt at the date of the order of adjudication, not exceeding four months' wages or salary, and not exceeding £50; all wages of any labourer or workmen in the employment of the bankrupt at the date of the order of adjudication, and not exceeding two months' wages. Save as aforesaid, all debts provable under the bankruptcy shall be paid *pari passu*.

33. Where, at the time of the presentation of the petition for adjudication, any person is apprenticed or is an articled clerk to the bankrupt, the order of adjudication shall, if either the bankrupt or apprentice or clerk give notice in writing to the trustee to that effect, be a complete discharge of the indenture of apprenticeship or articles of agreement; and if any money has been paid by or on behalf of such apprentice or clerk to the bankrupt as a fee, the trustee may, on the application of the apprentice or clerk, or of some person on his behalf, pay such sum as such trustee, subject to an appeal to the court, thinks reasonable out of the bankrupt's property to or for the use of the apprentice or clerk, regard being had to the amount paid by him or on his behalf, and to the time during which he served with the bankrupt under the indenture or articles before the commencement of the bankruptcy, and to the other circumstances of the case. Where it appears expedient to a trustee, he may, on the application of any apprentice or articled clerk to the bankrupt, or any person acting on behalf of such apprentice or articled clerk, instead of acting under the preceding provisions of this section, transfer the indenture of apprenticeship or articles of agreement to some other person.

34. The landlord or other person to whom any rent is due from the bankrupt may at any time, either before or after the commencement of the bankruptcy, distrain upon the goods or effects of the bankrupt for the rent due to him from the bankrupt, with this limitation, that if such distress for rent be levied after the commencement of the bankruptcy it shall be available only for one year's rent accrued due prior to the date of the order of adjudication, but the landlord or other person to whom the rent may be due from the bankrupt may prove under the bankruptcy for the overplus due for which the distress may not have been available.

35. When any rent or other payment falls due at stated periods, and the order of adjudication is made at any time other than one of such periods, the person *entitled to* such rent or payment may

prove for a proportionate part thereof up to the day of the adjudication as if such rent or payment grew due from day to day.

36. Interest on any debt provable in bankruptcy may be allowed by the trustee, under the same circumstances in which interest would have been allowable by a jury if an action had been brought for such debt.

38. The trustee, with the consent of the creditors, testified by a resolution passed in general meeting, may from time to time, during the continuance of the bankruptcy, make such allowance as may be approved by the creditors to the bankrupt out of his property for the support of the bankrupt and his family, or in consideration of his services if he is engaged in winding up his estate.

39. Where there have been mutual credits, mutual debts, or other mutual dealings between the bankrupt and any other person proving or claiming to prove a debt under his bankruptcy, an account shall be taken of what is due from the one party to the other in respect of such mutual dealings, and the sum due from the one party shall be set-off against any sum due from the other party, and the balance of such account, and no more, shall be claimed or paid on either side respectively; but a person shall not be entitled under this section to claim the benefit of any set-off against the property of a bankrupt, in any case where he had, at the time of giving credit to the bankrupt, notice of an act of bankruptcy committed by such bankrupt, and available against him for adjudication.

40. A creditor holding a specific security on the property of the bankrupt, or any part thereof, may, on giving up his security, prove for his whole debt. He shall also be entitled to a dividend in respect of the balance due to him after realizing or giving credit for the value of his security, in manner and at the time prescribed. A creditor holding such security as aforesaid and not complying with the foregoing conditions shall be excluded from all share in any dividend.

DIVIDENDS.

41. The trustee shall from time to time, when the committee of inspection determines, declare a dividend amongst the creditors who have proved to his satisfaction debts provable in bankruptcy, and shall distribute the same accordingly; and in the event of his not declaring a dividend for the space of six months, he shall summon a meeting of the creditors, and explain to them his reasons for not declaring the same.

42. In the calculation and distribution of a dividend, it shall be obligatory on the trustee to make provision for debts provable in bankruptcy, appearing from the bankrupt's statements, or otherwise, to be due to persons resident in places so distant from the place where the trustee is acting that in the ordinary course of communication they have not had sufficient time to tender their

proofs, or to establish them if disputed, and also for debts provable in bankruptcy, the subject of claims not yet determined.

43. Any creditor who has not proved his debt before the declaration of any dividend or dividends shall be entitled to be paid, out of any moneys for the time being in the hands of the trustee, any dividend or dividends he may have failed to receive, before such moneys are made applicable to the payment of any future dividend or dividends, but he shall not be entitled to disturb the distribution of any dividend declared before his debt was proved, by reason that he has not participated therein.

44. When the trustee has converted into money all the property of the bankrupt, or so much thereof as can, in the joint opinion of himself and of the committee of inspection, be realized without needlessly protracting the bankruptcy, he shall declare a final dividend, and give notice of the time at which it will be distributed.

45. The bankrupt shall be entitled to any surplus remaining after payment of his creditors, and of the costs, charges, and expenses of the bankruptcy.

46. No action or suit for a dividend shall lie against the trustee, but if the trustee refuses to pay any dividend, the court may, if it thinks fit, order the trustee to pay the same, and also to pay out of his own moneys interest thereon for the time that it is withheld, and the costs of the application.

CLOSE OF BANKRUPTCY.

47. When the whole property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can, in the joint opinion of the trustee and committee of inspection, be realized without needlessly protracting the bankruptcy, or a composition or arrangement has been completed, the trustee shall make a report accordingly to the court, and the court, if satisfied that the whole of the property of the bankrupt has been realized for the benefit of his creditors, or so much thereof as can be realized without needlessly protracting the bankruptcy, or that a composition or arrangement has been completed, shall make an order that the bankruptcy has closed, and the bankruptcy shall be deemed to have closed at and after the date of such order. A copy of the order closing the bankruptcy may be published in the *London Gazette*, and the production of a copy of such gazette containing a copy of the order shall be conclusive evidence of the order having been made and of the date and contents thereof.

DISCHARGE OF BANKRUPT.

48. When a bankruptcy is closed, or at any time during its continuance, with *the assent of the* creditors, testified by a special

resolution, the bankrupt may apply to the court for an order of discharge; but such discharge shall not be granted unless it is proved to the court that one of the following conditions has been fulfilled, that is to say, either that a dividend of not less than ten shillings in the pound has been paid out of his property, or might have been paid except through the negligence or fraud of the trustee, or that a special resolution of his creditors has been passed to the effect that his bankruptcy or the failure to pay ten shillings in the pound has, in their opinion, arisen from circumstances for which the bankrupt cannot justly be held responsible, and that they desire that an order of discharge should be granted to him; and the court may suspend for such time as it deems to be just, or withhold altogether, the order of discharge in the circumstances following; namely, if it appears to the court on the representation of the creditors made by special resolution, of the truth of which representation the court is satisfied, or by other sufficient evidence, that the bankrupt has made default in giving up to his creditors the property which he is required by this act to give up; or that a prosecution has been commenced against him in pursuance of the provisions relating to the punishment of fraudulent debtors, contained in the Debtors Act, 1869, in respect of any offence alleged to have been committed by him against the said act.

49. An order of discharge shall not release the bankrupt from any debt or liability incurred by means of any fraud or breach of trust, nor from any debt or liability whereof he has obtained forbearance by any fraud, but it shall release the bankrupt from all other debts provable under the bankruptcy, with the exception of—(1.) Debts due to the crown. (2.) Debts with which the bankrupt stands charged at the suit of the crown, or of any person for any offence against a statute relating to any branch of the public revenue, or at the suit of the sheriff or other public officer on a bail bond entered into for the appearance of any person prosecuted for any such offence. And he shall not be discharged from such excepted debts unless the commissioners of the treasury certify in writing their consent to his being discharged therefrom. An order of discharge shall be sufficient evidence of the bankruptcy, and of the validity of the proceedings thereon, and in any proceedings that may be instituted against a bankrupt who has obtained an order of discharge in respect of any debt from which he is released by such order, the bankrupt may plead that the cause of action occurred before his discharge, and may give this act and the special matter in evidence.

50. The order of discharge shall not release any person who, at the date of the order of adjudication, was a partner with the bankrupt, or was jointly bound or had made any joint contract with him

STATUS OF UNDISCHARGED BANKRUPT.

Where a person who has been made bankrupt has not
l his discharge, then, from and after the close of his bank-
the following consequences shall ensue :—(1.) No portion
bt provable under the bankruptcy shall be enforced against
perty of the person so made bankrupt until the expiration
e years from the close of the bankruptcy; and during that
he pay to his creditors such additional sum as will, with
idend paid out of his property during the bankruptcy,
p ten shillings in the pound, he shall be entitled to an order
iarge in the same manner as if a dividend of ten shillings
pound had originally been paid out of his property. (2.)
expiration of a period of three years from the close of the
ptcy, if the debtor made bankrupt has not obtained an
discharge, any balance remaining unpaid in respect of any
oved in such bankruptcy (but without interest in the mean
iall be deemed to be a subsisting debt in the nature of a
nt debt, and, subject to the rights of any persons who have
creditors of the debtor since the close of his bankruptcy,
enforced against any property of the debtor, with the
i of the court which adjudicated such debtor a bankrupt,
ie court having jurisdiction in bankruptcy in the place
he property is situated, but to the extent only, and at the
d in manner directed by such court, and after giving such
nd doing such acts as may be prescribed in that behalf.

DESCRIPTION OF COURT.

From and after the commencement of this act the following
ns shall take effect with respect to the courts having juris-
in bankruptcy, and their officers; that is to say, if the
ought to be adjudged a bankrupt reside or carry on business
the London bankruptcy district as hereinafter defined, or
esident in England, then "the court" shall mean, for the
s of this act, the court of bankruptcy in London as con-
by this act, and hereinafter referred to as the London
ptcy court: if the person sought to be adjudged a bank-
eing resident in England, do not reside or carry on business
the London bankruptcy district, then "the court" shall,
to the provisions hereinafter contained for removing the
ings, mean the county court of the district in which such
resides or carries on business, hereinafter referred to as
l bankruptcy court.

The London bankruptcy district shall, for the purposes of
, comprise the following places; that is to say, the city of
and the liberties thereof, and all such parts of the metropolis
er places as are *situated within* the district of any county

court described as a metropolitan county court in the list contained in the second schedule to the act.

61. The London bankruptcy court shall, from and after the commencement of this act, consist of a judge, to be called the chief judge in bankruptcy, and of such number of registrars not exceeding four, clerks, ushers, and other subordinate officers as may be determined by the chief judge with the sanction of the Treasury.

65. The London court of bankruptcy shall continue to be a court of law and of equity and a principal court of record, and the chief judge in bankruptcy shall have all the powers, jurisdiction, and privileges possessed by any judge of her Majesty's superior courts of common law at Westminster, or by any judge of her Majesty's High Court of Chancery, and the orders of such judge shall be of the same force as if they were judgments in the superior courts of common law or decrees in the High Court of Chancery. The chief judge in bankruptcy may sit in chambers, and when in chambers shall have the same jurisdiction and exercise the same powers as if sitting in open court.

66. Every judge of a local court of bankruptcy shall, for the purposes of this act, in addition to his ordinary powers as a county court judge, have all the powers and jurisdiction of a judge of her Majesty's High Court of Chancery, and the orders of such judge may be enforced accordingly in manner prescribed.

67. The chief judge in bankruptcy, and every judge of a local court of bankruptcy, may, subject and in accordance with the rules of court for the time being in force, delegate to the registrar, or to any other officer of his court, such of the powers vested in him by this act as it may be expedient for the judge to delegate to him.

GENERAL RULES.

78. The Lord Chancellor, with the advice of the chief judge in bankruptcy, may from time to time make, and may from time to time revoke and alter, general rules, in this act described as rules of court, for the effectual execution of this act, and of the objects thereof, and the regulation of the practice and procedure of bankruptcy petitions and the proceedings thereon.

AS TO PROCEEDINGS.

80. The following regulations shall be made with respect to proceedings in bankruptcy; namely, (1.) Every bankruptcy petition shall be accompanied by an affidavit of the petitioner in the prescribed form, verifying the statements contained in such petition. (2.) Where two or more bankruptcy petitions are presented against the same debtor, or against debtors being members of the same partnership, the court may consolidate the proceedings, or any

em, upon such terms as the court thinks fit. (3.) Where pro-
edings against the debtor are instituted in more courts than one,
e London court of bankruptcy may, on the application of any
editor, direct the transfer of such proceedings to the London
urt of bankruptcy, or to any local bankruptcy court. (4.)
here the petitioner does not proceed with due deligence on his
tition, the court may substitute as petitioner any other creditor
whom the debtor may be indebted in the amount required by
is act in the case of a petitioning creditor. (5.) Where the
editors resolve, by a special resolution, that it will be more con-
nient that the proceedings in any local bankruptcy court should
transferred to the London court or to some other local court, or
ere the judge of a local court certifies that in his opinion the
nkruptcy would be more advantageously conducted in the London
urt, or in some other local court, and the creditors do not, by
solution, object to the transfer, the petition shall be transferred
and all subsequent proceedings thereon had in the London court
such other local court. (6.) Subject to the provisions of
is act, every court having original jurisdiction in bankruptcy
all be deemed to be the same court, and to have jurisdiction
roughout England; and cases may be transferred from one court
another in such manner as may be prescribed. (7.) A cor-
ration may prove a debt, vote, and otherwise act in bankruptcy,
an agent duly authorized under the seal of the corporation.
.) A creditor may, in the prescribed manner, by instrument in
iting, appoint a person to represent him in all matters relating
any debtor or his affairs in which a creditor is concerned in pur-
ance of this act, and such representative shall thereupon, for all
e purposes of this act, stand in the same position as the creditor
o appointed him. (9.) When a debtor who has been adjudicated
ankrupt dies, the court may order that the proceedings in the
tter be continued as if he were alive. (10.) The court may, at
y time, on proof to its satisfaction that proceedings in bankruptcy
ght to be stayed, by reason that negotiations are pending for the
uidation of the affairs of the bankrupt by arrangement, or for
e acceptance of a composition by the creditors in pursuance of
e provisions hereinafter contained, or on proof to its satisfaction
any other sufficient reason for staying the same, make an order
ying the same, either altogether or for a limited time, on such
ms and subject to such conditions as the court may think just.
81. Whenever any adjudication in bankruptcy is annulled, all
es and dispositions of property and payments duly made, and
acts theretofore done, by the trustee or any person acting under
authority, or by the court, shall be valid, but the property of
debtor who was adjudged a bankrupt shall in such case vest in
h person as the court may appoint, or in default of any such
pointment revert to the bankrupt for all his estate or interest
rein, upon such terms and subject to such conditions, if any,

as the court may declare by order. A copy of the order of the court annulling the adjudication of a debtor as a bankrupt shall be forthwith published in the *London Gazette*, and advertised locally in the prescribed manner, and the production of a copy of the *Gazette* containing such order shall be conclusive evidence of the fact of the adjudication having been annulled, and of the terms of the order annulling the same.

82. No proceeding in bankruptcy shall be invalidated by any formal defect or by any irregularity, unless the court before which an objection is made to such proceeding is of opinion that substantial injustice has been caused by such defect or irregularity, and that such injustice cannot be remedied by any order of such court.

AS TO POWER OVER BANKRUPT.

85. The court, upon the application of the trustee, may from time to time order that, for such time as the court thinks fit, not exceeding three months from the date of the order of adjudication, post letters addressed to the bankrupt at any place or any of the places mentioned in the order, shall be re-directed, sent, or delivered by the postmaster-general or the officers acting under him to the trustee or otherwise as the court directs, and the same shall be done accordingly.

86. The court may, by warrant addressed to any constable or prescribed officer of the court, cause a debtor to be arrested, and any books, papers, moneys, goods, and chattels in his possession to be seized, and him and them to be safely kept as prescribed until such time as the court may order, under the following circumstances: (1.) If, after a petition of bankruptcy is presented against such debtor, it appear to the court that there is probable reason for believing that he is about to go abroad or to quit his place of residence, with a view of avoiding service of the petition, or of avoiding appearing to the petition, or of avoiding examination in respect of his affairs, or otherwise delaying or embarrassing the proceedings in bankruptcy. (2.) If, after a petition in bankruptcy has been presented against such debtor, it appear to the court that there is probable cause for believing that he is about to remove his goods or chattels, with a view of preventing or delaying such goods or chattels being taken possession of by the trustee, or that there is probable ground for believing that he has concealed or is about to conceal or destroy any of his goods or chattels, or any books, documents, or writings which might be of use to his creditors in the course of his bankruptcy. (3.) If, after the service of the petition on such debtor, or after an adjudication in bankruptcy against him, he remove any goods or chattels in his possession above the value of five pounds, without the leave of the trustee, or if, without good cause shown, he fails to attend any examination ordered by the court.

AS TO PROPERTY DEVOLVING ON TRUSTEE.

87. Where the goods of any trader have been taken in execution, in respect of a judgment for a sum exceeding fifty pounds, and sold, the sheriff, or in the case of a sale under the direction of the county court, the high bailiff or other officer of the county court, shall retain the proceeds of such sale in his hands for a period of fourteen days, and upon notice being served on him within that period of a bankruptcy petition having been presented against such trader, shall hold the proceeds of such sale, after deducting expenses, on trust to pay the same to the trustee; but if no notice of such petition having been presented be served on him within such period of fourteen days, or if, such notice having been served, the trader against whom the petition has been presented is not adjudged a bankrupt on such petition, or any other petition of which the sheriff, high bailiff, or other officer has notice, he may deal with the proceeds of such sale in the same manner as he would have done had no notice of the presentation of a bankruptcy petition been served on him.

88. Where a bankrupt is a beneficed clergyman, the trustee may apply for a sequestration of the profits of the benefice, and the certificate of the appointment of the trustee shall be sufficient authority for the granting of sequestration without any writ or other proceeding, and the same shall accordingly be issued as on a writ of *levari facias* founded on a judgment against the bankrupt, and shall have priority over any other sequestration issued after the commencement of the bankruptcy, except a sequestration issued before the date of the order of adjudication by or on behalf of a person who at the time of the issue thereof had not notice of an act of bankruptcy committed by the bankrupt, and available against him for adjudication; but the sequestrator shall allow, out of the profits of the benefice, to the bankrupt, while he performs the duties of the parish or place, such an annual sum, payable quarterly, as the bishop of the diocese in which the benefice is situate directs; and the bishop may appoint to the bankrupt such or the like stipend as he might by law have appointed to a curate duly licensed to serve the benefice in case the bankrupt had been non-resident.

89. Where a bankrupt is or has been an officer of the army or navy, or an officer or clerk or otherwise employed or engaged in the civil service of the Crown, or is in the enjoyment of any pension or compensation granted by the Treasury, the trustee during the bankruptcy, and the registrar after the close of the bankruptcy, shall receive for distribution amongst the creditors so much of the bankrupt's pay, half-pay, salary, emolument, or pension as the court, upon the application of the trustee, thinks just and reasonable, to be paid in such *manner and* at such times as the court,

with the consent in writing of the chief officer of the department under which the pay, half-pay, salary, emolument, pension, or compensation is enjoyed, directs.

90. Where a bankrupt is in the receipt of a salary or income other than as aforesaid, the court upon the application of the trustee shall from time to time make such order as it thinks just for the payment of such salary or income, or of any part thereof, to the trustee during the bankruptcy, and to the registrar if necessary after the close of the bankruptcy, to be applied by him in such manner as the court may direct.

91. Any settlement of property made by a trader, not being a settlement made before and in consideration of marriage, or made in favour of a purchaser or incumbrancer in good faith and for valuable consideration, or a settlement made on or for the wife or children of the settler, of property which has accrued to the settler after marriage in right of his wife, shall, if the settler becomes bankrupt within two years after the date of such settlement, be void as against the trustee of the bankrupt appointed under this act, and shall, if the settler becomes bankrupt at any subsequent time within ten years after the date of such settlement, unless the parties claiming under such settlement can prove that the settler was at the time of making the settlement able to pay all his debts without the aid of the property comprised in such settlement, be void against such trustee. Any covenant or contract made by a trader, in consideration of marriage, for the future settlement upon or for his wife or children, of any money or property wherein he had not at the date of his marriage any estate or interest, whether vested or contingent, in possession or remainder, and not being money or property of or in right of his wife, shall, upon his becoming bankrupt before such property or money has been actually transferred or paid pursuant to such contract or covenant, be void against his trustee appointed under this act. "Settlement" shall for the purposes of this section include any conveyance or transfer of property.

92. Every conveyance or transfer of property, or charge thereon made, every payment made, every obligation incurred, and every judicial proceeding taken or suffered by any person unable to pay his debts as they become due, from his own moneys, in favour of any creditor, or any person in trust for any creditor, with a view of giving such creditor a preference over the other creditors, shall, if the person making, taking, paying, or suffering the same become bankrupt within three months after the date of making, taking, paying, or suffering the same, be deemed fraudulent, and void as against the trustee of the bankrupt appointed under this act; but this section shall not affect the rights of a purchaser, payee, or incumbrancer in good faith and for valuable consideration.

93. Any treasurer or other officer, or any banker, attorney, or agent of a bankrupt, shall pay and deliver to the trustee all moneys

rities in his possession or power as such officer or agent, not by law entitled to retain as against the bankrupt or e ; if he do not, he shall be guilty of a contempt of court, be punished accordingly on the application of the

thing in this act contained shall render invalid :—(1.) ent made in good faith and for value received to any , before the date of the order of adjudication, by a person ig at the time of such payment notice of any act of bank- mmitted by the bankrupt, and available against him for ion. (2.) Any payment or delivery of money or goods to a bankrupt, made to such bankrupt by a depository oney or goods before the date of the order of adjudica- had not at the time of such payment or delivery notice t of bankruptcy committed by the bankrupt, and avail- st him for adjudication. (3.) Any contract or dealing bankrupt, made in good faith and for valuable considera- ore the date of the order of adjudication by a person g, at the time of making such contract or dealing, notice t of bankruptcy committed by the bankrupt, and avail- st him for adjudication.

bject and without prejudice to the provisions of this act o the proceeds of the sale and seizure of goods of a nd to the provisions of this act avoiding certain settle- id avoiding on the ground of their constituting fraudulent es, certain conveyances, charges, payments, and judicial gs, the following transactions by and in relation to the of a bankrupt shall be valid, notwithstanding any prior kruptcy :—(1.) Any disposition or contract with respect isposition of property by conveyance, transfer, charge, of goods, payment of money, or otherwise howsoever ny bankrupt in good faith and for valuable consideration, e date of the order of adjudication, with any person not the time of the making of such disposition of property any act of bankruptcy committed by the bankrupt, and against him for adjudication. (2.) Any execution or nt against the land of the bankrupt, executed in good seizure before the date of the order of adjudication, if n on whose account such execution or attachment was d not at the time of the same being so executed by seizure any act of bankruptcy committed by the bankrupt, and against him for adjudication. (3.) Any execution or nt against the goods of any bankrupt, executed in good seizure and sale before the date of the order of adjudica- ie person on whose account such execution or attachment d had not at the time of the same being executed by id sale notice of any act of bankruptcy committed by the and available against him for adjudication.

AS TO DISCOVERY OF BANKRUPT'S PROPERTY.

96. The court may, on the application of the trustee, at any time after an order of adjudication has been made against a bankrupt, summon before it the bankrupt or his wife, or any person whatever known or suspected to have in his possession any of the estate or effects belonging to the bankrupt, or supposed to be indebted to the bankrupt, or any person whom the court may deem capable of giving information respecting the bankrupt, his trade, dealings or property, and the court may require any such person to produce any documents in his custody or power relating to the bankrupt, his dealings or property; and if any person so summoned, after having been tendered a reasonable sum, refuses to come before the court at the time appointed, or refuses to produce such documents, having no lawful impediment made known to the court at the time of its sitting and allowed by it, the court may, by warrant addressed as aforesaid, cause such person to be apprehended and brought up for examination.

97. The court may examine upon oath, either by word of mouth or by written interrogatories, any person so brought before it in manner aforesaid concerning the bankrupt, his dealings or property.

98. If any person on examination before the court admit he is indebted to the bankrupt, the court may, on the application of the trustee, order him to pay to the trustee, at such time and in such manner as to the court seems expedient, the amount admitted, or any part thereof, either in full discharge of the whole amount in question or not, as the court thinks fit, with or without costs of the examination.

99. Any person acting under warrant of the court may seize any property of the bankrupt divisible amongst his creditors under this act, and in the bankrupt's custody or possession, or in that of any other person; and with a view to such seizure may break open any house, building, or room of the bankrupt where the bankrupt is supposed to be, or any building or receptacle of the bankrupt where any of his property is supposed to be; and where the court is satisfied that there is reason to believe that property of the bankrupt is concealed in a house or place not belonging to him, the court may, if it thinks fit, grant a search warrant to any constable or prescribed officer of the court, who may execute the same according to the tenor thereof.

Liquidation by Arrangement.

REGULATIONS.

125. The following regulations shall be made with respect to the liquidation by arrangement of the affairs of the debtor:—(1.) A

debtor unable to pay his debts may summon a general meeting of his creditors, and such meeting may, by a special resolution, as defined by this act, declare that the affairs of the debtor are to be liquidated by arrangement, and not in bankruptcy, and may at that or some subsequent meeting, held at an interval of not more than a week, appoint a trustee, with or without a committee of inspection. (2.) All the provisions of this act relating to a first meeting of creditors, and to subsequent meetings of creditors in the case of a bankruptcy, including the description of creditors entitled to vote at such meetings, and the debts in respect of which they are entitled to vote, shall apply respectively to the first meeting of creditors, and to subsequent meetings of creditors for the purposes of this section, subject to the following modifications: (*a*) That every such meeting shall be presided over by such chairman as the meeting may elect; and (*b*) that no creditor shall be entitled to vote until he has proved by a statutory declaration a debt provable in bankruptcy to be due to him, and the amount of such debt, with any prescribed particulars; and any person wilfully making a false declaration in relation to such debt shall be guilty of a misdemeanour. (3.) The debtor, unless prevented by sickness or other cause satisfactory to such meeting, shall be present at the meeting at which the special resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meeting, some one on his behalf, shall produce to the meeting a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom his debts are due. (4.) The special resolution, together with the statement of the assets and debts of the debtor, and of the name of the trustee appointed, and of the members, if any, of the committee of inspection, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section; but if satisfied that it was so passed, and that a trustee has been appointed with or without a committee of inspection, he shall forthwith register the resolution and the statement of the assets and debts of the debtor, and such resolution and statement shall be open for inspection on the prescribed conditions, and the liquidation by arrangement shall be deemed to have commenced as from the date of the appointment of the trustee. (5.) All such property of the debtor as would, if he were made bankrupt, be divisible amongst his creditors, shall, from and after the date of the appointment of a trustee, vest in such trustee under a liquidation by arrangement, and be divisible amongst the creditors, and all such settlements, conveyances, transfers, charges, payments, obligations, and proceedings as would be void against the trustee in the case of bankruptcy shall be void against the trustee in the case of liquidation by arrangement. (6.) The certificate of the registrar in respect of the appointment of any trustee in the case of a liquidation by arrangement, shall be of the same effect as

a certificate of the court to the like effect in the case of a bankruptcy. (7.) The trustee under a liquidation shall have the same powers and perform the same duties as a trustee under a bankruptcy, and the property of the debtor shall be distributed in the same manner as in a bankruptcy; and with the modification hereinafter mentioned, all the provisions of this act shall, so far as the same are applicable, apply to the case of a liquidation by arrangement in the same manner as if the word "bankrupt" included a debtor whose affairs are under liquidation, and the word "bankruptcy" included liquidation by arrangement; and in construing such provisions the appointment of a trustee under a liquidation shall, according to circumstances, be deemed to be equivalent to and a substitute for the presentation of a petition in bankruptcy, or the service of such petition or an order of adjudication in bankruptcy. (8.) The creditors, at their first or any general meeting, may prescribe the bank into which the trustee is to pay any moneys received by him, and the sum which he may retain in his hands. (9.) The provisions of this act with respect to the close of the bankruptcy, discharge of a bankrupt, to the release of the trustee, and to the audit of accounts by the comptroller, shall not apply in the case of a debtor whose affairs are under liquidation by arrangement; but the close of the liquidation may be fixed, and the discharge of the debtor and the release of the trustee may be granted by a special resolution of the creditors in general meeting, and the accounts may be audited in pursuance of such resolution, at such time, and in such manner, and upon such terms and conditions as the creditor think fit. (10.) The trustee shall report to the registrar the discharge of the debtor, and a certificate of such discharge given by the registrar shall have the same effect as an order of discharge given to a bankrupt under this act. (11.) Rules of court may be made in relation to proceedings on the occasion of liquidation by arrangement, in the same manner and to the same extent and of the same authority as in respect of proceedings in bankruptcy. (12.) If it appear to the court on satisfactory evidence that the liquidation by arrangement cannot, in consequence of legal difficulties, or of there being no trustee for the time being, or for any sufficient cause, proceed without injustice or undue delay to the creditors or to the debtor, the court may adjudge the debtor a bankrupt, and proceedings may be had accordingly. (13.) Where no committee of inspection is appointed, the trustee may act on his own discretion in cases where he would otherwise have been bound to refer to such committee. (14.) In calculating a majority on a special resolution for the purposes of this section, creditors whose debts amount to sums not exceeding £10 shall be reckoned in the majority in value, but not in the majority in number.

Composition with Creditors.

REGULATIONS.

126. The creditors of a debtor unable to pay his debts may, without any proceedings in bankruptcy, by an extraordinary resolution, resolve that a composition shall be accepted in satisfaction of the debts due to them from the debtor. An extraordinary resolution of creditors shall be a resolution which has been passed by a majority in number and three-fourths in value of the creditors of the debtor, assembled at a general meeting to be held in the manner prescribed, of which notice had been given in the prescribed manner, and has been confirmed by a majority in number and value of the creditors assembled at a subsequent general meeting, of which notice had been given in the prescribed manner, and held at an interval of not less than seven days nor more than fourteen days from the date of the meeting at which such resolution was first passed. In calculating a majority for the purposes of a composition under this section, creditors whose debts amount to sums not exceeding £10 shall be reckoned in the majority in value, but not in the majority in number, and the value of the debts of secured creditors shall, as nearly as circumstances admit, be estimated in the same way, and the same description of creditors shall be entitled to vote at such general meetings as in bankruptcy. The debtor, unless prevented by sickness or other cause satisfactory to such meetings, shall be present at both the meetings at which the extraordinary resolution is passed, and shall answer any inquiries made of him, and he, or if he is so prevented from being at such meetings, some one on his behalf, shall produce to the meetings a statement showing the whole of his assets and debts, and the names and addresses of the creditors to whom such debts respectively are due. The extraordinary resolution, together with the statement of the debtor as to his assets and debts, shall be presented to the registrar, and it shall be his duty to inquire whether such resolution has been passed in manner directed by this section, and if satisfied that it has been so passed, he shall forthwith register the resolution and statement of assets and debts, but until such registration has taken place, such resolution shall be of no validity; and any creditor of the debtor may inspect such statement at prescribed times, and on payment of such fee, if any, as may be prescribed. The creditors may, by an extraordinary resolution, add to or vary the provisions of any composition previously accepted by them, without prejudice to any persons taking interests under such provisions who do not assent to such addition or variation; and any such extraordinary resolution shall be presented to the registrar in the same manner and with the same consequences as the extra-

ordinary resolution by which the composition was a
first instance. The provisions of a composition a
extraordinary resolution in pursuance of this section
ing on all the creditors whose names and addresses, a
of debts due to whom, are shown in the statement
produced to the meetings at which the resolution h
shall not affect or prejudice the rights of any ot
Where a debt arises on a bill of exchange or promisso
debtor is ignorant of the holder of any such bill o
promissory-note, he shall be required to state the a
bill or note, the date on which it falls due, the name
or person to whom it is payable, and any other part
his knowledge respecting the same, and the inso
particulars shall be deemed a sufficient description o
of the debtor in respect of such debt, and any mis
advertently by a debtor in the statement of his deb
rected after the prescribed notice has been given, wi
of a general meeting of his creditors. The provision
position made in pursuance of this section may be en
court on a motion made in a summary manner b
interested, and any disobedience of the order of the
such motion shall be deemed to be a contempt of co
court may be made in relation to proceedings on th
the acceptance of a composition by an extraordinary
creditors, in the same manner and to the same exte
same authority as in respect of proceedings in bank
appear to the court on satisfactory evidence that
under this section cannot, in consequence of legal dif
any sufficient cause, proceed without injustice or u
the creditors, or to the debtor, the court may adjudg
bankrupt, and proceedings may be had accordingly.

Rules of court have been made under the authority o
scribing the manner in which the act is to be carried i

The Absconding Debtors Act, 1870, extends the pr
by the Bankruptcy Act, 1869, for the arrest and s
absconding debtors.

By section 24 of the Judicature Act, 1873, in the
of the estate of deceased insolvents, the same rules are
as to the respective rights of secured and unsecure
may, for the time being, be in force with respect
estates.

CHAPTER XVII.

The Revenue.

THE revenue, formerly under the control of the
now under that of the lords commissioners of the

s, however, been more immediately under the manage-
ne of the divisions of the Exchequer, which consists of
of the receipt of the exchequer for collection of royal
This office has been reconstituted by 4 & 5 W. 4, c. 15,
recently by 29 & 30 V. c. 39, which consolidates the ex-
ad audit departments under a comptroller and auditor-
d an assistant appointed by the crown. The ordinary
such as has either subsisted time out of mind in the
as been granted by parliament in exchange for some of the
crown revenues. A great part of the old revenue of the
in the hands of subjects, to whom it has been granted
to time. This ordinary revenue consists of different
he first to be noticed is of an ecclesiastical kind, namely,
ly of the temporalities of bishops during vacancy, and
uits and tenths of all spiritual preferments in the king-
the latter one has now, for the purposes of revenue, been
as all the revenue of first-fruits and tenths is vested in
r ever by Queen Anne (confirmed by 2 & 3 A. c. 11), to
petual fund for the augmentation of poor livings, called
ie's bounty, and the custody of the temporalities of bishops
a very inconsiderable portion of the revenue, as by cus-
new bishop received the restitution of his temporalities
by the crown. Another branch of the royal revenue is
nd profits of the demesne lands of the crown, but most
,ve been granted away to subjects, and now the superin-
f the royal demesnes is vested in the commissioners of
forests. The rights and interests in the fore-shore also
by the crown, but these have been by 29 & 30 V. c. 62,
to the board of trade in aid of the reduction of the
ebt. The profits from the ordinary courts of justice
her branch of the royal revenue, but these have been
y reduced and are now, in great measure, paid by
post). The crown has also a right to royal fish, such as
and sturgeon, and to wrecks, treasure trove, waifs, and
it by different acts it is provided that the board of trade
the general superintendence of all matters relating to
it can, with the consent of the Treasury, appoint *re-*
wreck in different districts.

now considered the most important portions of the ordi-
ue or proper patrimony of the crown. There are some
s, such as the right to certain mines, the forfeiture of
goods for offences, and the revenue which arises from
id from the custody of idiots, which cannot be mentioned
:ularly here. This ordinary revenue was formerly very
has been gradually reduced. The crown does not, how-
by such reduction, for the ordinary revenue has never
ent to meet the wants of the state, and has had to be
ed by private contributions from subjects. These gra-

dually swelled into the modern system of taxation, by which all the public service, including the service of the crown, is now maintained. These contributions by way of taxation are granted by the Commons of Great Britain and Ireland in parliament assembled. The taxes now imposed are the following:—(1) the land-tax, (2) the customs, (3) the excise, (4) the Post-Office duties, (5) the stamp duties, (6) the assessed taxes, (7) income-tax.

I. LAND-TAX.

The land-tax is a territorial impost, anciently levied under the name of actuage, hydage, and talliage. It was introduced in its present form in the reign of William III., when a new assessment or valuation of estates was made throughout the kingdom; which, though by no means a fair one, had the effect of raising a supply of £500,000, by an assessment of 1*s.* in the pound on the value of the estates given in. The method of raising it is by charging a particular sum on each county, according to the valuation of 1692, and this sum is assessed and raised on individuals by commissioners appointed in the act, being the principal landholders in the county, and their officers. Up to the year 1798, the land-tax was an annual tax; at that period, with the view of supporting public credit, and augmenting the national resources, it was made perpetual. The last annual act was the 38 G. 3, which imposed the tax for the year at the rate of 4*s.* in the pound; and it was made perpetual, at that rate, by a statute passed in the same year, the 38 G. 3, c. 60, which has been modified and amended by subsequent statutes. At the same time, the land-tax was made subject to *redemption* by the owner of the land on which it was laid. The sums paid in either case are applied to the reduction of the national debt; and the price is regulated by the price of the funds at the time, being now, by the combined effect of 42 G. 4, c. 116, s. 22, and 16 & 17 V. c. 74, so much stock in the 3 per cent. Consols, or 3 per cent. Reduced, as will be less by the amount of £7 10*s.* per cent than so much stock as would yield a dividend equalling the land-tax redeemed. By 46 G. 3, c. 133, the commissioners may exonerate small livings and charitable institutions, the income of which is under £150, from the land-tax without any consideration, provided the annual amount in the whole does not exceed £6,000. Under 1 & 2 W. 4, c. 21, lands remaining subject to the *double* land-tax assessment, imposed, in the reign of William III., on the estate of Roman Catholics, were relieved on complaint to the commissioners of land-tax.

II. THE CUSTOMS.

The customs are duties levied on commodities exported or imported. They were first authorised by statute in the 3 Edw. 1, and the mode long employed in [illegible] to fix a certain

rate of value upon each kind of merchandise, and to grant on these rates a subsidy, generally a poundage of 1s. for every 20s. of value in the book of rates. The present book of rates was formed in 1692, and agreeably with official valuation has been useful for denoting the comparative *quantities* of commodities passing through the customs, but not their *real* or *declared* value. The collection and management of the customs of the United Kingdom, and of the British possessions abroad, are under the control of a board of commissioners. They are appointed by the crown, and subject, in all matters relative to the execution of their duties, to the authority and direction of the lords of the Treasury. Subordinate officers of the customs are appointed by the Treasury, or by the commissioners under the authority of the Treasury, and receive such salaries and emoluments, and give such securities, as the lords of the Treasury appoint. No commissioner, officer, clerk, or other person employed in the collection and management of the revenue of customs is compellable to serve as mayor or sheriff, or in any corporate or parochial or other public office or employment, or to serve on any jury, or inquest, or in the militia. The only holidays allowed are *Good Friday*, *Christmas day*, and the Queen's birthday, and any day of public fast or thanksgiving.

The Customs Consolidation Act of 1853, the 16 & 17 V. c. 107, is a complete embodiment of the law of customs under the several heads pertaining to the appointment of officers, ports, &c. : the importation and warehousing of merchandise, the entry and clearance of goods and ships for exportation : the coasting trade: British possessions : bonds and other securities : smuggling, including restrictions on small craft, compensations, and rewards : and legal proceedings generally. By s. 54, the following articles are absolutely prohibited to be imported, under pain of forfeiture, and to be destroyed or otherwise disposed of as the commissioners may direct :—Copyright books ; extracts, essences, or other concentrations of coffee, chicory, tea, or tobacco, or any admixture of the same ; indecent or obscene prints, paintings, books, cards, lithographic or other engravings, or any other indecent or obscene articles.

Persons may be searched if officers have reason to suspect smuggled goods are concealed upon them. Obstructing officer, penalty £100. Persons denying having uncustomed goods about them, if such are afterwards found, are liable to forfeit treble their value. Persons before search may require to be carried before a justice or principal officer of customs, ss. 229 & 230. Officer misconducting himself, penalty £10. Persons concerned in importing prohibited or restricted goods, or harbouring or having such goods in custody, to forfeit treble the value, or £100. Penalty on officer making collusive seizures, or taking bribes, £500, and future incapacity for public service. Offering any bribe, reward, or recompense to an officer, penalty £200.

By 22 & 23 V. c. 37, any officer of the customs having charge of goods, is empowered to refuse the delivery of them from the Queen's warehouse, or other place, until satisfactory proof has been given that the freight due upon such goods has been paid. By s. 6, the fraudulent concealment of goods on importation to evade a higher for a lower duty, or the making false entries thereof, subjects them to forfeiture and a penalty of £100 for each offence.

III. THE EXCISE.

The taxes levied upon articles of consumption which are produced within the kingdom are called the excise duties. They were first resorted to as a temporary expedient by the Long Parliament, but were found too convenient and productive to be relinquished; and under Charles II., the military tenures, which pressed on the landed interest, were got rid of by an extension of them to the consuming classes. The collection and management of the excise are under the commissioners of inland revenue, who appoint collectors, accountants, and other subordinate officers, and give them such salaries and allowances as the Treasury directs. The levy of the excise revenue is facilitated in England and Wales by the division of the counties into fifty-six collections, each collection being subdivided into districts, over which there is a supervisor, and each district into out-riders and foot-walks, over which there is a gauger or surveying officer. No person holding any office of excise is allowed to deal in any goods or carry on any trade subject to the excise laws, on pain of forfeiture of office, and disqualification for any office in the excise department. Officers are exempt from filling any corporate, parochial, or other public office, and from serving on a jury or inquest, or in the militia. Officers taking money or reward, or entering into any collusive agreement to defraud the revenue, to forfeit £500. Offering any reward to, or attempting a collusive agreement with, an officer, subjects the offender to like penalty. Either party first giving information against the other is indemnified. Officers may enter at any time premises subject to the survey of excise; but if between the hours of eleven at night and five in the morning (except in special cases) it must be on request, and in presence of a constable. They may also leave on the premises a book or paper called a *specimen*, for recording minutes of entries made by them on the state of the manufactory. Removing, destroying, or in any way defacing such specimen, subjects to penalty of £200. Obstructing or molesting an officer or his assistant in the execution of his duty, penalty £200. Using any premises or utensils which by the law of excise are required to be entered, without first making an entry thereof, subjects to a penalty of £200; or using premises or utensils for other purposes than those for which they were entered, penalty £100.

By 15 & 16 V. c. 61, information for penalties or forfeitures within the limits of the chief office may be determined either before three or more commissioners of the inland revenue, or before a police magistrate sitting at a metropolitan police court. Commissioners may determine either at the chief office, or elsewhere. Officers of inland revenue, or solicitors, appointed by commissioners, may conduct proceedings before magistrates.

The acts relating to the excise are very numerous, being more than 170 in number.

The excise duties are also increased by the duties on licenses. Those within the limits of the chief office of excise in London are granted by the commissioners of inland revenue or persons employed by them for the purpose. Within the limits of the cities of Edinburgh and Dublin, by the commissioners or assistant commissioners there, or employed by them; elsewhere by the collectors and supervisors of the respective excise collections. Every license contains the name and abode of the person taking out the same, the date and purpose for which granted, and the place where the trade or business shall be carried on. No excise license is necessary for the sale of an excisable commodity while it is in the import warehouse, provided such sale be of not less than one entire package or cask made to one person or partnership. Upon death or removal, a license may be transferred by endorsement for the residue of the term, but a fresh entry must be made of the premises.

The penalties on manufacturers, dealers, and others neglecting to take out excise licenses are very considerable, and in some cases amount to £500 The following are some of the principal license duties to be paid to the Commissioners of Inland Revenue :—

		£	s.	d.
Appraiser		2	0	0
Armorial bearings on a carriage		2	2	0
,, otherwise used		1	1	0
Auctioneer		10	0	0
Banker		30	0	0
Carriages, four wheels		2	2	0
,, less than four wheels		0	15	0
Dogs		0	5	0
Firearms (persons holding game licenses exempt)		0	10	0
Horses	each	0	10	6
Horse dealers		12	10	0
House agents		2	0	0
Male servants	each	0	15	0
Maker of playing cards or dice		1	0	0
Medicine vendor, London		2	0	0
,, any other corporate town		0	10	0
,, elsewhere		0	5	0
Pawnbroker, London		15	0	0

	£	s.	d.
Pawnbroker, elsewhere	7	10	0
Plate dealers, selling above 2 oz. gold and 30 oz. silver	5	15	0
" selling under the above weight	2	6	0
Stage and hackney carriage driver, conductor, or waterman, annual by commissioners of police in London	0	5	0
Brewer of beer, not exceeding 25 barrels	0	12	6
Brewer for sale by retail, not to be consumed on the premises	5	10	0
Brewer of beer for sale who uses sugar in brewing, an additional license of	1	0	0
Seller of beer only, not brewers	3	6	1½
Beer retailers (publicans) whose premises are rated under £20 per annum (England and Ireland)	1	2	0½
" at £20 or upwards	3	6	1½
Retailer of beer, cider, and perry, to be drunk on the premises (England only)	3	6	1½
" not to be drunk on the premises	1	2	0½
Retailers of beer, cider, or perry, only in Scotland, whose premises are rated under £10 per annum	2	10	0
" at £10 per annum or upwards	4	0	0
Maltster, making not exceeding 50 quarters	0	7	10½
Malt mashers	20	0	0
Dealers in mashed malt	10	0	0
Passage vessels or boats which liquors or tobacco are sold	1	1	0
Spirits—Distiller, rectifier, or dealer, not retailer, or maker of methylated spirits	10	10	0
Dealers for retailing foreign liquors	2	2	0
Makers of stills, Scotland and Ireland	0	10	6
Chemist or any other trade requiring the use of a still	0	10	0
Retailers of spirits whose premises are rated under £10 per annum, England and Ireland	2	4	1
Retailers of spirits and beer, whose premises are rated under £10 per annum, Scotland	4	4	0
Retailer of spirits in Ireland, whose premises are rated under £50 per annum	9	18	[illegible]
Sweets, retail, United Kingdom	1	2	[illegible]
" if sold in two gallons or upwards	5	5	0
Tobacco and snuff, manufacturers of tobacco and snuff, not exceeding 2,000 lbs.	5	5	0
Exceeding 2,000 lbs. and not exceeding 40,000 lbs.	10	10	0
Dealers in tobacco and snuff	0	5	0
Vinegar makers	5	5	0
Wine, dealer in foreign wine, not having licenses for retailing spirits and beer	10	10	0
Refreshment houses, if under the value of £30 a year	0	10	0
" above that value	1	0	0

	£	s.	d.
it houses, if to sell foreign wine retail, and if			
e value of £50 a year, to be consumed on the			
. . . . .	3	3	0
ditto, to sell foreign or British wine .	2	2	0
if rental £50 or over . . .	3	3	0
ise to kill, annually . . .	3	0	0
shorter period	2	0	0
ditto to sell	2	0	0
cense, special	5	0	0
not special	0	10	0

For Exemptions, see p. 567, *post.*

IV. THE POST-OFFICE DUTIES.

eral Post Office of the United Kingdom is managed by a general, assisted by a secretary, and having under him officers of his own appointing, sworn to the faithful f their duties. It was established nearly upon the lel by the Commonwealth, in 1649, with the design not ilitating mercantile communications, but of detecting us designs against the Protector. The policy of having ondence of the empire under the inspection of govern- ill continued; for, by a warrant from the secretary of s may be detained and opened; but severe penalties l if any person wilfully detain or open a letter without rity. Postmaster-general may establish any cross-posts, ntinue by-bags, and carry between towns and places not

He is not a common carrier for hire; therefore he is for constructive negligence, and no action can be main- ist him for the loss of bank-notes, bills or other articles st. By 1 V. c. 33, s. 12, no person employed by the s compellable to serve as mayor, sheriff, or in any eccle- rporate, parochial, or other public office or employment, ury or inquest, or in the militia.

V. c. 52, a uniform rate of postage, commencing with d increasing with the weight, was established; the par- privilege of franking being abolished, and official frank- regulated. The charge for inland letters is now at a penny for a letter not above one ounce, and halfpenny ter the first ounce up to 12 ounces. A letter above 12 iable to a postage of one penny for every ounce, be- h the first ounce. The postage must be prepaid, or arged double; and if the weight of the letter exceeds the stamp, it will be charged double. Anything may post, but nothing should be posted that will not bear the letter bags. All letters or packets posted at any

post office or receiving office, except at some principal offices in London, Edinburgh, and Dublin, must either be prepaid by stamps or be sent unpaid. These regulations do not extend to letters for places abroad, which may still be prepaid by money or stamps, at the option of the sender. Petitions and addresses forwarded direct to the Queen are exempt from postage; and also petitions to parliament are exempt, if sent to a member of either house, without covers, or in covers open at the sides. The rate of postage for parliamentary papers is ½*d.* for every 2 oz.

Newspapers, Books, Post-cards.—The Post-Office Act, 1870, enacts, that from and after the 30th day of September, 1870, registered newspapers, book-packets, pattern or sample-packets, and post-cards, may be sent by post between places in the United Kingdom at the following rate of postage:—On a registered newspaper, with or without a supplement or supplements, ½*d.*; on each registered newspaper on a packet of two or more, with or without a supplement or supplements, ½*d.*; on a book-packet or pattern or sample-packet, if not exceeding 2 oz. in weight, ½*d.*; if exceeding 2 oz. in weight, for the first 2 oz., and for every additional 2 oz. or fractional part of 2 oz., ½*d.*; on a post-card, ½*d.* Provided that a packet of two or more registered newspapers, with or without a supplement or supplements, shall not be liable under this section to a higher rate of postage than the rate chargeable on a book-packet of the same weight. This act provides that the postmaster-general may, from time to time, with the approval of the Treasury, make, in relation respectively to registered newspapers, book-packets, patterns, or sample-packets, and post-cards, sent by post, such regulations as he thinks fit for all or any of the following purposes:—For prescribing and regulating the times and modes of posting and delivery; for prescribing prepayment and regulating the mode thereof; for regulating the affixing of postage-stamps; for prescribing and regulating the payment again of postage in case of re-direction; for regulating dimensions and maximum weight of packets; for regulating the nature and form of covers; for prohibiting or restricting the printing or writing of marks, or communications, or words; for prohibiting inclosures; and such other regulations as from time to time seem expedient for the better execution of the act.

The parts of the last-mentioned act relating to the sending of pattern or sample-packets were repealed in the following year (1871) by 34 & 35 V. c. 30. The 1st section of this act empowers the Commissioners of the Treasury, by warrant under their hands, from time to time to reduce the rates of postage on letters in the United Kingdom, and to regulate the scale of weights, and to revoke, alter, or add to any warrant previously made under the 1st section of the act, but so that the lowest rate of postage be not less than one penny.

The regulations for the time being in force with respect to the

above, and many other similar matters, may be obtained at a low price at every post office.

By 10 & 11 V. c. 85, *printed receipts* may be given for the postage at the expense of the person requiring the same. Letters sent contrary to post-office regulations may be detained. Commissioner under a fiat of bankruptcy may order, for a period not exceeding three months, any letter addressed to the bankrupt to be re-directed to the official assignee or other person. The sender of an unstamped letter may be compelled to pay the postage of a rejected letter, with the additional postage for re-delivery; or the receiver of a letter, after the payment of the postage, may, if desirous to reject the letter, on application to the Post Office, recover the postage, and such postage and re-postage be charged to the sender of the same. But a person to whom a letter is addressed is not free to open and read it; the opening of a letter is the act of ownership, and if the person to whom it is directed open it he is liable for postage. In proceedings for postage the apparent writer to be deemed the sender of a letter.

Money orders for sums to the amount of £10 are granted in every post town upon every other post town in the United Kingdom, on application at the various offices, and also by and upon certain offices in the metropolis, of which the postmaster is furnished with a list, for which a commission of 1*d.* for a sum under 10*s.*, and 2*d.* under £1, and 3*d.* under £2, and so on to £10 is charged. They must be presented for payment within the second calendar month after obtained, or a fresh order will be charged for; or within the twelfth calendar month, or they will not be paid at all. Money orders are also issued for certain colonies and foreign countries.

Wrongfully opening or *delaying* a post letter is a misdemeanour, except in certain specified cases. Officer to steal, embezzle, or secrete a letter, subjects him to penal servitude for four years, or imprisonment for three years, and if such letter contain any chattel or money, transportation for life. It is transportation for life in any person to steal a post letter or bag, or any money or valuable therefrom, or to stop the mail, with intent to rob and search the same. Receiver of stolen letter or bag subject to penal servitude for life. To steal, destroy, or delay any printed votes, or proceedings in parliament, or any printed newspaper, or any printed paper sent by the post without cover, or in covers open at the sides, subjects to fine and imprisonment. Persons endeavouring to procure the commission of any post-office felony or misdemeanour, subject to two years' imprisonment.

By 1 V. c. 36, s. 2, any person illegally conveying a letter incurs a penalty of £5 for every offence, and £100 for every week the practice is continued. The sender also incurs a penalty of £5 for every offence, with full costs of suit. The penalty extends to letters only; the transmission of books, newspapers, or money may be by any mode the sender pleases.

V. THE STAMP DUTIES.

These are under the management of the Commissioners of Inland Revenue, and form an important branch of the public income; they were first imposed in the reign of William III., and include a variety of duties levied on receipts, bills, and notes, probate of wills, licenses, indentures of apprenticeship, agreements, bonds, bills of lading, conveyances, and other legal instruments. Stamps always denote the price of the particular stamp or the tax levied on the stamped instrument, and sometimes they denote the nature of the instrument itself. If the instrument is written upon paper, the stamp is impressed in relief upon the paper itself; but to a parchment instrument the stamp is attached by paste and a small piece of lead, which itself forms part of the impression. An instrument unstamped, or improperly stamped, could not formerly be given in evidence, but provision has been now made in many cases for the admission in evidence of such documents, on payment of the stamp duty and penalty to the proper officer of the court.

In 1870, the Stamp Acts were consolidated and amended by the Stamp Act, 1870 (33 & 34 V. c. 97), and the principal duties now payable are as follows (there are some special exemptions, for which reference must be made to the act itself):—

	Duty. £	s.	d.
Admission in England, Scotland, or Ireland, of any person as an advocate in any court . . .	50	0	0
Admission in England or Ireland of any person to the degree of barrister-at-law :			
If he has been previously duly admitted to the said degree in Ireland, or in England, as the case may be	10	0	0
In any other case	50	0	0
Admission of any person to be a member of either of the four Inns of Court in England, or a student of the Society of King's Inns in Dublin . . .	25	0	0
Admission of any person to be a member of either of the societies commonly called Inns of Chancery in England	3	0	0
Admission in England or Ireland of any person as an attorney, solicitor, or proctor in any court . .	25	0	
Admission of any person as a Fellow of the College of Physicians in England, Scotland, or Ireland . .	25	0	
Admission to the degree of Doctor of Medicine in either of the universities in Scotland	10	0	
Admission in England or Ireland of any person as a			

	£	s.	d.
urgess, or into any corporation or company, in any ity, borough, or town corporate :			
In respect of birth, apprenticeship, or marriage, r, in Ireland, in respect of being engaged in any ade, mystery, or handicraft	1	0	0
Upon any other ground	3	0	0
nission and appointment, or grant by any writing,) or of any office or employment where the annual ılary, fees, or emoluments appertaining to such fice or employment do not exceed £100 . .	2	0	0
Exceed £100 and do not exceed 150 . .	4	0	0
,, 150 ,, 200 . .	6	0	0
,, 200 ,, 250 . .	8	0	0
,, 250 ,, 300 . .	10	0	0
,, 300 for every £100, and also for any fractional part of £100	5	0	0
lavit, or statutory declaration made under the pro- ısions of 5 & 6 W. 4, c. 62 (unless to be used in ıy court or at the Bank of England) . . .	0	2	6
eement or contract made or entered into pursuant) the Highway Acts for or relating to the making, ıaintaining, or repairing of highways . . .	0	0	6
eement, or any memorandum of an agreement, ade in England or Ireland under hand only, or ade in Scotland without any clause of registration, ıd not otherwise specifically charged with any duty, hether the same be only evidence of a contract or)ligatory upon the parties from its being a written strument, except for sale of goods, &c. . .	0	0	6
ointment of a new trustee, and appointment in tecution of a power of any property, or of any use, ıare, or interest in any property, by any instru- ent not being a will	0	10	0
raisement or valuation, where the amount of the)praisement or valuation does not exceed £5 . .	0	0	3
Exceeds £5 and does not exceed £10 . .	0	0	6
,, 10 ,, 20 . .	0	1	0
,, 20 ,, 30 . .	0	1	6
,, 30 ,, 40 . .	0	2	0
,, 40 ,, 50 . .	0	2	6
,, 50 ,, 100 . .	0	5	0
,, 100 ,, 200 . .	0	10	0
,, 200 ,, 500 . .	0	15	0
,, 500	1	0	0
renticeship, instrument of, where there is no pre- ium or consideration	0	2	6
ny other case, for every £5, and also for any frac-			

	£	s.	d.
tional part of £5, of the amount or value of the premium or consideration	0	5	0
Articles of clerkship whereby any person first becomes bound to serve as a clerk in order to his admission:			
(1.) As an attorney or solicitor in any of Her Majesty's courts at Westminster, or in Ireland, or as a proctor in the High Court of Admiralty, or any Ecclesiastical Court in England or Ireland . .	80	0	0
(2.) As an attorney or solicitor in any of the courts of the counties palatine of Lancaster and Durham, or as a writer to the signet, or as a solicitor, agent, or attorney in the Court of Session, Justiciary, or Commissions of Teinds in Scotland	60	0	0
(3.) As a procurator or solicitor in any inferior court in Scotland	0	2	6
Articles of clerkship, whereby any person, having been before bound by duly stamped articles to serve as a clerk in order to his admission in any of the courts aforesaid, and not having completed his service so as to be entitled to such admission, becomes bound afresh for the same purpose . . .	0	10	0
Award in England or Ireland, and award or decreet arbitral in Scotland, where the amount or value of the matter in dispute does not exceed £5 . .	0	0	3
Exceeds £5 and does not exceed £10 . .	0	0	6
,, 10 ,, 20 . .	0	1	0
,, 20 ,, 30 . .	0	1	6
,, 30 ,, 40 . .	0	2	0
,, 40 ,, 50 . .	0	2	6
,, 50 ,, 100 . .	0	5	0
,, 100 ,, 200 . .	0	10	0
,, 200 ,, 500 . .	0	15	0
,, 500 ,, 750 . .	1	0	0
,, 750 ,, 1,000 . .	1	5	0
And where it exceeds £1,000, and in any other case not above provided for	1	15	0
Bank note for money not exceeding £1 . .	0	0	5
Exceeding £1 and not exceeding £2 . .	0	0	10
,, 2 ,, 5 . .	0	1	3
,, 5 ,, 10 . .	0	1	9
,, 10 ,, 20 . .	0	2	0
,, 20 ,, 30 . .	0	3	0
,, 30 ,, 50 . .	0	5	0
,, 50 ,, 100 . .	0	8	6
Bill of exchange, payable on demand . . .	0	0	1
Bill of exchange of any other kind whatsoever (*except a bank note*) and promissory note of any kind what-			

	£	s.	d.
soever (*except a bank note*), drawn, or expressed to be payable, or actually paid or endorsed, or in any manner negotiated in the United Kingdom:			
Where the amount or value of the money for which the bill or note is drawn or made does not exceed £5	0	0	1
Exceeds £5 and does not exceed £10 . .	0	0	2
,, 10 ,, 25 . .	0	0	3
,, 25 ,, 50 . .	0	0	6
,, 50 ,, 75 . .	0	0	9
,, 75 ,, 100 . .	0	1	0
,, 100 for every £100, and also for any fractional part of £100, of such amount or value .	0	1	0
Bill of lading of or for any goods, merchandise, or effects to be exported or carried coastwise . .	0	0	6
Bond, covenant, or instrument of any kind whatsoever:			
(1.) Being the only or principal or primary security for any annuity (*except upon the original creation thereof by way of sale or security*), or of any sum or sums of money at stated periods, not being interest for any principal sum secured by a duly stamped instrument, nor rent reserved by a lease or tack; for a definite and certain period, so that the total amount to be ultimately payable can be ascertained, the same *ad valorem* duty as a bond or covenant for such total amount. For the term of life or any other indefinite period: for every £5, and also for any fractional part of £5, of the annuity or sum periodically payable . .	0	2	6
(2.) Being a collateral or auxiliary or additional or substituted security for any of the above-mentioned purposes, where the principal or primary instrument is duly stamped: where the total amount to be ultimately payable can be ascertained, the same *ad valorem* duty as a bond or covenant of the same kind for such total amount. In any other case: for every £5, and also for any fractional part of £5, of the annuity or sum periodically payable . . .	0	0	6
Bond given pursuant to the directions of any Act of Parliament, or by the directions of the Commissioners of Customs or Inland Revenue, or any of their officers: where the penalty of the bond does not exceed £150, the same *ad valorem* duty as a bond for the amount of the penalty. And in any other case	0	5	0
Bond on obtaining letters of administration in Eng-			

[illegible] or Ireland, or a confirmation of settlement in Scotland [illegible]

[illegible] of any kind whatsoever not specifically charged with any duty [illegible] where the amount limited to be [illegible] does not exceed £300, the same ad valorem duty as a bond for the amount limited. In any other case [illegible]

[illegible] to be taken out yearly. 1. By every person admitted or enrolled in England or Ireland as an attorney, solicitor, proctor, or notary public: £1. By every person admitted or enrolled in Scotland as a writer to the signet, solicitor, agent, attorney, procurator, or notary public: 1. By every other person qualified person who carries on business in England or Ireland as a scrivener, agent, factor, or stockbroker in money, and is obliged by law to take out such a certificate. If such person practises or carries on his business in England, within ten miles from the General Post Office in the city of London, in Scotland, within the city or suburbs of Edinburgh, in Ireland, in the city of Dublin, or within three miles thereof [illegible]

In England, Scotland, or Ireland, beyond the [illegible]

For the first three years the duties are £4 [illegible]

For every license for enabling any person or persons to [illegible] or merchandize by wholesale, or to vend any wines [illegible] any city or place of residence, or any [illegible]

For every license for the registration of a design [illegible]

[illegible]

For every grant or commission granted by Her Majesty, her heirs or successors, or by any person or persons duly authorized by her or them, to an officer in the army, or in the corps of Royal Marines. 1

For every commission granted by the Lords Commissioners of the Admiralty to any officer in the navy. 0

For every commission or instrument granted by the Commissioners of Inland Revenue [illegible] 1

For every commission of [illegible] 0

For every [illegible] 0

For every conveyance or transfer, whether on sale or otherwise:

1. Of any stock of the governor and company of the Bank of England [illegible] 0

2. Of any stock of the East India Company [illegible] 1 1

	£	s.	d.
(3.) Of any debenture stock or funded debt of any company or corporation: for every £100, and also for any fractional part of £100, of the nominal amount transferred	0	2	6
Conveyance or transfer on sale of any property (*except such stock or debenture stock or funded debt as aforesaid*): where the amount or value of the consideration for the sale does not exceed £5 . .	0	0	6
Exceeds £5 and does not exceed £10 . . .	0	1	0
„ 10 „ 15 . . .	0	1	6
„ 15 „ 20 . . .	0	2	0
„ 20 „ 25 . . .	0	2	6
„ 25 „ 50 . . .	0	5	0
„ 50 „ 75 . . .	0	7	6
„ 75 „ 100 . . .	0	10	0
„ 100 „ 125 . . .	0	12	6
„ 125 „ 150 . . .	0	15	0
„ 150 „ 175 . . .	0	17	6
„ 175 „ 200 . . .	1	0	0
„ 200 „ 225 . . .	1	2	6
„ 225 „ 250 . . .	1	5	0
„ 250 „ 275 . . .	1	7	6
„ 275 „ 300 . . .	1	10	0
„ 300 for every £50, and also for any fractional part of £50, of such amount or value .	0	5	0
Conveyance or transfer of any kind not hereinbefore described	0	10	0
Copy or extract (*attested or in any manner authenticated*) in the case of an instrument chargeable with any duty not amounting to one shilling, the same duty as such instrument. In any other case . .	0	1	0
Copy or extract (*certified*) of or from any register of births, baptisms, marriages, deaths, or burials .	0	0	1
Copyhold and customary estates—instruments relating thereto. Upon any occasion, not being sale, mortgage, or lease: surrender or grant made out of court, or the memorandum thereof, and copy of court-roll of any surrender or grant made in court . .	0	10	0
Covenant. Any separate deed of covenant (*not being an instrument chargeable with ad valorem duty as a conveyance on sale or mortgage*) made on the sale or mortgage of any property, and relating solely to the conveyance or enjoyment of, or the title to, the property sold or mortgaged, or to the production of the muniments of title relating thereto, or to all or any of the matters aforesaid: where the *ad*			

	£	s.	d.
ad valorem duty in respect of the consideration or mortgage money does not exceed £10, a duty equal to the amount of such *ad valorem* duty. In any other case		0	1
Detention or certificate for entitling any person to receive any drawback of any duty or duties of Customs or Excise: where the drawback or bounty to be received does not exceed £10		0	1
Exceeds £10 and does not exceed £50		0	2
Exceeds £50		0	3
Declaration of any use or trust of or concerning any property by any writing not being a deed or will or an instrument chargeable with *ad valorem* duty as a settlement		0	1
Deed of any kind whatsoever, not otherwise described		0	10
Delivery order		0	1
Deputation or appointment of a gamekeeper		0	10
Docket made on passing any instrument under the Great Seal of the United Kingdom		0	2
Duplicate or counterpart of any instrument chargeable with any duty. Where such duty does not amount to £5, the same duty as the original instrument			
In any other case		5	
Exemplification or extract of any letters patent or grant made or to be made by Her Majesty, her heirs or successors, or by any of her royal predecessors of any honour, dignity, preeminence, franchise, liberty, or privilege, or of any lands, office, or other thing whatsoever	5		
Exemplification under the seal of any court in England or Ireland of any record or proceeding therein	5		
Faculty, license, commission, or dispensation for admitting or authorising any person to act as a notary public in England	25	0	
In Scotland or Ireland	10	0	
Faculty or dispensation of any other kind in England	25	0	
In Ireland	25	0	
Grant or letters patent:			
(1) of the honour or dignity of a duke	250	0	0
" " of a marquis	200	0	0
" " of an earl	150	0	0
" " of a viscount	100	0	0
" " of a baron	100	0	0
" " of a baronet	100	0	0
(2) Of a congé d'élire to any dean and chapter for the election of an archbishop or bishop	50	0	0

	£	s.	d.
(3.) Of the royal assent to, or signification of, the election made by any dean and chapter, or of the nomination and presentation by Her Majesty, her heirs or successors, in default of such election of any person to be an archbishop or bishop . . .	30	0	0
(4.) Of or for the restitution of the temporalities to any archbishop or bishop	30	0	0
(5.) Of any other honour, dignity, or promotion whatsoever	30	0	0
(6.) Of any franchise, liberty, or privilege to any person or body politic or corporate . . .	30	0	0
Grant or warrant of precedence to take rank among nobility, under the sign manual of Her Majesty, her heirs or successors	100	0	0
Grant or license under the sign manual to take and use a surname and arms, or a surname only. In compliance with the injunctions of any will or settlement	50	0	0
Upon any voluntary application	10	0	0
Grant of arms or armorial ensigns only, under the sign manual, or by any of the Kings of Arms of England, Scotland, or Ireland	10	0	0
Grant of the custody of the person or estate of any lunatic.	2	0	0
Lease or tack—(1.) For any definite term less than a year :			
(*a.*) Of any dwelling-house or tenement, or part of a dwelling-house or tenement, at a rent not exceeding the rate of £10 per annum . . .	0	0	1
(*b.*) Of any furnished dwelling house or apartments where the rent for such term exceeds £25 .	0	2	6
(*c.*) Of any lands, tenements, or heritable subjects except or otherwise than as aforesaid, the same duty as a lease for a year at the rent reserved for the definite term.			
(2.) For any other definite term, or for any indefinite term : of any lands, tenements, or heritable subjects, where the consideration, or any part of the consideration, moving either to the lessor or to any other person, consists of any money, stock, or security, in respect of such consideration, the same duty as a conveyance on a sale for the same consideration ; where the consideration or any part of the consideration is any rent, in respect of such consideration, if the rent, whether reserved as a yearly rent or otherwise, is at a rate or average rate :			

	If the term is definite, and does not exceed 35 years, or is indefinite.			If the term being definite exceeds 35 years but does not exceed 100 years.			If the term being definite exceeds 100 years.		
	£	s.	d.	£	s.	d.	£	s.	d.
Not exceedg. £5 per annum	0	0	6	0	3	0	0	6	0
Exceeding—									
£5 and not exeeeding £10	0	1	0	0	6	0	0	12	0
10 " " 15	0	1	6	0	9	0	0	18	0
15 " " 20	0	2	0	0	12	0	1	4	0
20 " " 25	0	2	6	0	15	0	1	10	0
25 " " 50	0	5	0	1	10	0	3	0	0
50 " " 75	0	7	6	2	5	0	4	10	0
75 " " 100	0	10	0	3	0	0	6	0	0
For every full sum of £50, and also for any fractional part of £50 thereof	0	5	0	1	10	0	3	0	0

(3.) Of any other kind whatsoever not hereinbefore described 0 10 0

Letter of allotment or letter of renunciation, or any other document having the effect of a letter of allotment 0 0 1

And scrip certificate, scrip, or other similar document 0 0 1

Letter or power of attorney, or commission factory, mandate, or other instrument in the nature thereof:

(1.) For the sole purpose of appointing or authorizing any one person to vote as a proxy at any one meeting at which votes may be given by proxy, and by an Act of 1871, whether the number of persons named be one or more 0 0 1

(2.) By any petty officer, seaman, marine, or soldier serving as a marine, or by the executors or administrators of any such person, for receiving prize money or wages 0 1 0

(3.) For the receipt of the dividends or interest of any stock: where made for the receipt of one payment only 0 1 0

In any other case 0 5 0

(4.) For the receipt of any sum of money, or any bill of exchange or promissory note for any sum of

	£	s.	d.
money, not exceeding £20, or any periodical payments not exceeding the annual sum of £10 (*not being hereinbefore charged*)	0	5	0
(5.) For the sale, transfer, or acceptance of any of the government or parliamentary stocks or funds, where the value of such stocks or funds does not exceed £20	0	5	0
In any other case	0	10	0
(6.) Of any kind whatsoever not hereinbefore described	0	10	0
Letters of marque and reprisal.	5	0	0
License for marriage, special, in England or Ireland .	5	0	0
Not special, in England	0	10	0
Memorial to be registered pursuant to any act of parliament, made or to be made, for the public registering of deeds and conveyances in England or Ireland: where the instrument registered is chargeable with any duty not amounting to 2*s.* 6*d.*, the same duty as the registered instrument. In any other case .	0	2	6
Mortgage, bond, debenture, covenant, warrant of attorney to confess and enter up judgment, and foreign security of any kind. (1.) Being the only or principal or primary security for the payment or repayment of money not exceeding £25 . . .	0	0	8
Exceeding £25 and not exceeding £50 . .	0	1	3
,, 50 ,, 100 . .	0	2	6
,, 100 ,, 150 . .	0	3	9
,, 150 ,, 200 . .	0	5	0
,, 200 ,, 250 . .	0	6	3
,, 250 ,, 300 . .	0	7	6
,, 300			
For every £100, and also for any fractional part of £100, of such amount	0	2	6
(2.) Being a collateral, or auxiliary, or additional, or substituted security, or by way of further assurance for the above-mentioned purpose, where the principal or primary security is duly stamped: for every £100, and also for any fractional part of £100, of the amount secured	0	0	6
(3.) Transfer, assignment, disposition, or assignation of any mortgage, bond, debenture, covenant, or foreign security, or of any money or stock secured by any such instrument, or by any warrant of attorney to enter up judgment, or by any judgment: for every £100, and also for any fractional part of £100, of the amount transferred, assigned, or disponed .	0	0	6

[redacted]

	£	s.	d.
or given in evidence as part of, or as material to, any other instrument charged with any duty, but which is separate and distinct from, and not indorsed on or annexed to, such other instrument: where such other instrument is chargeable with any duty not exceeding 10*s.*, the same duty as such other instrument. In any other case	0	10	0
Settlement. Any instrument, whether voluntary or upon any good or valuable consideration, other than a *bond fide* pecuniary consideration, whereby any definite and certain prinpical sum of money (whether charged or chargeable on lands or other hereditaments or heritable subjects or not, or to be laid out in the purchase of lands or other hereditaments or heritable subjects or not), or any definite and certain amount of stock, or any security, is settled or agreed to be settled in any manner whatsoever: for every £100, and also for any fractional part of £100, of the amount or value of the property settled or agreed to be settled	0	5	0
Transfer. Any request or authority to the purser or other officer of any mining company, conducted on the cost-book system, to enter or register any transfer of any share, or part of a share, in any mine, or any notice to such purser or officer of any such transfer	0	0	6
Voting paper. Any instrument for the purpose of voting by any person entitled to vote at any meeting	0	0	1
Warrant of attorney of any other kind than to secure a loan	0	10	0
Warrant for goods	0	0	3
Warrant under the sign manual of Her Majesty, her heirs or successors	0	10	0

GENERAL EXEMPTIONS FROM ALL STAMP DUTIES.

(1.) Transfers of shares in the government or parliamentary stocks or funds. (2.) Instruments for the sale, transfer, or other disposition, either absolutely or by way of mortgage, or otherwise, of any ship or vessel, or any part, interest, share, or property of or in any ship or vessel. (3.) Instruments of apprenticeship, bonds, contracts, and agreements entered into in the United Kingdom for or relating to the service in any of Her Majesty's colonies or possessions abroad of any person as an artificer, clerk, domestic servant, handicraftsman, mechanic, gardener, servant in husbandry, or labourer. (4.) Testaments, testamentary instruments, and dispositions *mortis causâ* in Scotland. (5.) Bonds

given to sheriffs or other persons upon the replevy of any goods or chattels, and assignments of such bonds. (6.) Commissions granted to officers of militia, yeomanry, or volunteers. (7.) Instruments made by, to, or with the Commissioners, or the First Commissioner, of Her Majesty's Works and Public Buildings, for any of the purposes of the act 15 & 16 V. c. 28.

Probate of Wills and Letters of Administration.

	With a Will.			Without a Will.		
	£	s.	d.	£	s.	d.
Above the value of £20 and under £50 .		—		0	10	0
,, 50 ,, 100 .		—		1	0	0
,, 20 ,, 100 .	0	10	0		—	
,, 100 ,, 200 .	2	0	0	3	0	0
,, 200 ,, 300 .	5	0	0	8	0	0
,, 300 ,, 450 .	8	0	0	11	0	0
,, 450 ,, 600 .	11	0	0	15	0	0
,, 600 ,, 800 .	15	0	0	22	0	0
,, 800 ,, 1,000 .	22	0	0	30	0	0
,, 1,000 ,, 1,500 .	30	0	0	45	0	0
,, 1,500 ,, 2,000 .	40	0	0	60	0	0
,, 2,000 ,, 3,000 .	50	0	0	75	0	0
,, 3,000 ,, 4,000 .	60	0	0	90	0	0
,, 4,000 ,, 5,000 .	80	0	0	120	0	0
,, 5,000 ,, 6,000 .	100	0	0	150	0	0
,, 6,000 ,, 7,000 .	120	0	0	180	0	0
,, 7,000 ,, 8,000 .	140	0	0	210	0	0
,, 8,000 ,, 9,000 .	160	0	0	240	0	0
,, 9,000 ,, 10,000 .	180	0	0	270	0	0

Continuing to increase up to £1,000,000.

The graduated scale ceasing when the value amounts to one million and upwards, such graduation is extended by 22 & 23 V. c. 36. In lieu of former scale, when the value amounts to one million and upwards, there shall be paid—"For every £100,000 of the whole value of such estate and effects, and fractional part of £100,000, where the deceased shall have left any will or testament, or testamentary disposition of his personal or movable estate and effects, the stamp duty of £1,500; and where the deceased shall *not* have left any such will or testament, the stamp duty of £2,350.

By a recent act, probates and letters of administration are exempt from stamp duty where the effects do not exceed in value £100.

Duties on Legacies and on Succession to Real Property.

Of the value of £20 or upwards, out of Personal Estate, or charged upon Real Estate, &c., and upon every share of residue:—

To a child or parent, or any lineal descendant or ancestor of the deceased, £1 per cent.; to a brother or sister, or their descendants, £3 per cent.; to an uncle or aunt, or their descendants, £5 per cent.; to a great uncle or great aunt, or their descendants, £6 per cent.; to any other relation, or any stranger in blood, £10 per cent. Legacy to husband or wife exempt

It was in 1853, by 16 & 17 V. c. 51, the legacy duty was extended to real estate, and the duty made payable on succession both to landed and personal property. By s. 18, a succession of less value than £100 is exempt from duty; and no duty is payable upon any succession estimated of less value than £20 in the whole, or which would be exempted under the Legacy Duties Act. Lease-hold estates not chargeable with legacy duty as personal estates, s. 19. Succession duty made a first charge on property. Notice of a succession to be given to the commissioners, and a return made of the property. Penalty for neglect to make return proportioned to the rate of duty payable. Returns to be verified by production of books and documents.

Stamps are now used instead of payments by fees in proceedings in Bankruptcy and Insolvency, in the High Court of Admiralty, and in Chancery.

VI. THE ASSESSED TAXES.—EXEMPTIONS.

The assessed taxes include various domestic taxes, assessed or levied on houses, menial servants, carriages, pleasure-horses, and other articles of private use and luxury. In 1851, duties on windows were abolished and replaced by a duty on inhabited houses being worth the rent of *twenty pounds or upwards* by the year.

Inhabited House Duty.—If used wholly or partly for the sale of goods, as a shop or warehouse, the shop or warehouse being on the ground floor; or for the sale of beer, wines, or spirits; or if occupied by a tenant or farm servant for husbandry purposes only; for every 20*s.* of yearly value, the sum of . . . 6*d.*
If occupied for any other purpose, for every 20*s.* of yearly value . . . . . ; 9*d.*

By s. 11 of 32 & 33 V. c. 14, any tenement or part of a tenement occupied as a house for the purposes of trade only, or as a warehouse for the sole purpose of lodging goods, wares or merchandise in it, or as a shop or counting-house or being used as such, is exempt from inhabited house duties, although a servant or other person may dwell in such tenement or part of a tenement for its protection only; and by s. 31 of 34 & 35 V. c. 103, every inhabited dwelling-house of £20 yearly rental or upwards, which is occupied

by a person who carries on the business of a hotel keeper, innkeeper, or coffee-house keeper, although not licensed to sell liquor by retail on the premises, is to be charged annually at the rate of 6*d.* in the pound on the rental.

By s. 8 of 32 & 33 V. c. 14, the land tax, inhabited house duty, and income tax (except such income tax as is payable by way of reduction), are to be payable every year on the 1st of January, instead as formerly quarterly. By s. 18 of the same act the duties on carriages, horses, armorial bearings, male servants, and horse dealers, were made excise duties, and were placed under the management of the Commissioners of Inland Revenue.

It is not necessary for licenses to be taken out in the following cases: (1.) By any officer in the army for any horses required by the regulations of the service to be kept by him. (2.) By any effective officer commanding a volunteer corps for any number of horses not exceeding two, kept by such officer for service in such corps (3.) By any person for any horse or mule kept by him solely for the purpose of husbandry, or use in his business as a market gardener, and which shall not be used for riding or for drawing any carriage for which a license is required. (4.) By any person for any mare used solely for breeding purposes, or for any horse or mule used solely in an underground mine. (5.) By any horse dealer duly licensed for any horse or mule being his property and kept on his premises for sale, and which shall not be let for hire.

The term carriage means any vehicle drawn by a horse or a mule except a waggon, cart, or other vehicle used solely for the conveyance of any goods or burden in the course of trade or husbandry, and whereon the christian name and surname, and place of abode or place of business, of the owner or of the company or firm owning the same, is visibly and legibly painted in letters of not less than one inch in length.

By 35 & 36 V. c. 20, s. 6, no person is required to take out a license as above, for any waggon or cart used for conveying the owner or his family to or from any place of divine worship on Sunday, Christmas day, Good Friday, or on any day appointed for a public fast or thanksgiving, provided that such waggon or cart is marked in the manner provided in s. 19 of 32 & 33 V. c. 14, and mentioned above.

By s. 24 of 34 & 35 V. c. 103, horses belonging to officers in the militia, yeomanry, and volunteer services, and kept for such services, are exempt from license duty.

By 36 & 37 V. c. 18, s. 4, on and after the 1st of January, 1874, it shall not be necessary for a license to be taken out under 32 & 33 V. c. 14, by any hotel keeper, retailer of intoxicating liquor, or refreshment-house keeper, for any servant wholly employed by him for the purposes of his business.

A duty of £3 17*s.* is, by 19 & 20 V. c. 82, to be paid for every horse which shall start or run for any plate, prize, or sum of money, and to be the duty for one year ending April 5th next after the day on which the horse starts or runs. Duty to be paid to the clerk of the course previously to the starting of the racehorse. Penalty on the owner refusing to pay the duty, or not producing receipt of previous payment, £50, and a like penalty on the clerk of the course not demanding the duty before the race, or otherwise neglecting his duty as the act directs.

Dogs.—By 30 V. c. 5, in lieu of assessed tax on dogs, a license duty, under the excise, of 5*s.* to be paid on every dog, of whatever description, by the person keeping the same. Keeping a dog without a license in force, or a greater number of dogs than licensed, to forfeit £5, and the person in custody or charge of the dog deemed to be the keeper. Penalty of £5 on not producing license on request to an excise officer or police constable. Dogs under six months old not liable to duty, s. 10.

No person chargeable with duty to any greater amount than £39 12*s.* for any number of hounds, or £9 for any number of greyhounds kept by him in any year.

Exemption.—Any dog kept and used in the care of sheep or cattle, or in driving or removing the same; provided no such dog shall be a greyhound, hound, pointer, setting-dog, spaniel, lurcher, or terrier.

Duties on passengers conveyed for hire by carriages travelling upon railways—£5 per cent. on the gross amount of fares

And by s. 13 of 26 & 27 V. c. 33, the accounts for sums received for the conveyance of passengers upon railways are to be made up at the close of each calendar month.

The mileage duty on stage coaches and omnibuses was reduced in 1866, and was repealed entirely in 1869, by 32 & 33 V. c. 33, s. 17.

It may be interesting to mention Dr. Johnson's description of the excise, which was as follows:—"A hateful tax levied upon commodities and adjudged, not by the common judges of property, but wretches hired by those to whom excise is paid."

VII. INCOME TAX.

Income or property tax is the duty on profits or income arising from property, professions, trades, and offices, and which, by 16 & 17 V. c. 34, was altered and continued from 1853 to April 6, 1860. The chief alterations introduced by the act were the extension of it for the first time to Ireland; second, the extension of the tax to incomes below £150, but not below £100; *third*, the progressive

reduction of the tax at intervals of two or three years; and, lastly, its final abandonment in seven years, simultaneously with an equivalent gain to the exchequer by the expiration of the Long Annuities in 1860. During the term of two years from April 5, 1853, the assessment of property, annuities, dividends, salaries, pensions, profits, and gains, would be, for every 20*s.* of the annual value or amount thereof, 7*d.* During the further term of two years from April 5, 1855, the assessment would be 6*d.* in the pound; and during the further term of three years from April 5, 1857, the assessment would be 5*d.* in the pound. These prospective reductions were suspended by the war with Russia in 1854; and by 17 V. c. 10, additional rates and duties, amounting to one moiety of the whole of the duties payable under the act of 1853, are made chargeable for the year commencing April 6, 1854. In 1855, by 18 & 19 V. c. 20, an additional rate of duty of 2*d.* in the pound was imposed, to continue during the war. By the act of 1853, the 16 & 17 V. c. 34, s. 56, persons knowingly and wilfully inciting or assisting any one to make false returns of profits or value, are subject to a penalty of £50. By 24 & 25 V. c. 91, s. 36, the income tax on interest and dividends payable in the United Kingdom, arising out of foreign companies, is made to include also colonial possessions. In the budget of 1866 the duty was continued at 4*d.* in the pound, and for occupiers of farms 2*d* in the pound on the rent in England, and 1½*d.* in Scotland and Ireland. Persons whose income from every source is under £100 a year are exempt. A deduction of £60 to be allowed from incomes below £200 a year, and balance taxed at 4*d.* in the pound. The expense of the Abyssinian expedition caused a temporary augmentation of the rate, but it was afterwards reduced, and in 1870 the fourpenny rate was regranted for one year. The income tax is this year (1873) 3*d.* in the pound, and a deduction of £80 is allowed from all incomes below £300 a year, the balance to be taxed at the rate of 3*d.* A penny in the pound of income tax makes a difference of £1,600,000 in the public revenue.

PART V.

CIVIL INJURIES.

WRONGS are of two kinds; *private* wrongs and *public* wrongs: the former are an infringement of the rights of individuals, and termed civil injuries; the latter are a violation, not only of the rights of individuals, but of the community, and distinguished by

he harsher names of felonies or misdemeanours. Redress for rivate wrongs must be sought at the risk and cost of individuals, hile the prosecution of criminal wrongs is carried on in the name nd at the suit of the crown as conservator of the general peace nd security. It is the nature and character of the former, or ivil injuries, that will now engage attention, reserving public rimes for the concluding part. While the number of criminal ffences recognized by the law is great, those of a civil nature are omparatively few, and the principal of them may be comprised nder the following classification:—

1. *Libel.*
2. *Slander.*
3. *Personal Injuries.*
4. *Adultery.*
5. *Seduction.*
6. *Trespass.*
7. *Malicious Prosecution.*
8. *Nuisance.*
9. *Negligence.*

CHAPTER I.

Libel.

IBEL is usually defined a malicious defamation of another, expressed in writing or printing, or by signs, pictures, or representations, and differs from slander, which is verbal or spoken defamation. In general any publication is libellous that hurts or disparages either an individual or the state; with respect to individuals, whatever tends to hurt their feelings or reputation is libel; and with respect to the *government*, anything is construed libellous that tends to hold it up to hatred, contempt, or disesteem.

The remedy for libel is either by *indictment*, by *action*, or *information*; the former for the public offence, as tending to provoke the person libelled to a breach of the peace, which is the same whether the matter of the libel be *true* or *false*; and therefore the defendant, on an indictment for libel, will not be allowed to allege the truth of it by way of justification, unless he can show that it was for the public benefit the matters charged were published. In *civil* action, however, a libel must appear to be false as well as scandalous: for if the *charge be true*, the plaintiff has no ground to demand compensation for himself, whatever offence it may be against the public peace; and, therefore, in a civil action for damages, the truth may be pleaded in bar of the suit. A proceeding by *information* is generally directed against libels on the established religion or government, and is instituted *ex officio* by the attorney-general. In a criminal information by an individual, the court will exert a discretionary power in sanctioning such a

mode of prosecution; and when the libel contains a direct charge, which it lies in the power of the applicant to deny, if false, the court will require a positive affidavit that the charge is unfounded.

Between libel, or *written* scandal, and mere *verbal* defamation, there is an important distinction, because the former is presumed to be a more deliberate injury, and propagated in a wider and more permanent form. Hence the word *swindler*, if *spoken* of another (unless it be spoken in relation to his trade or business), is not actionable; but if it be published in a *written* form, it is actionable, 2 *Hen. Bl.* 531. So the publication of a letter in which the plaintiff was designated "one of the most infernal villains that ever disgraced human nature" was held actionable, without proof of special damage, 1 *Bos. & Pul.* 331.

Printing or writing may be libellous, though the scandal be not directly charged, but obliquely and ironically. So is hanging up, or burning in effigy, with intent to expose some person to ridicule and contempt, a libel.

Defamatory writing, expressing only one or two letters of a name, provided the accompanying matter clearly designate an individual, is as properly a libel as if the whole name had been expressed at length.

With respect to publications on the GOVERNMENT, the main question is, whether bad motives are imputed to the members of administration, and whether the motives are couched in terms *decent* and *respectful*. The imputation of mere error in judgment, even to the sovereign herself, if done in a respectful manner, is not libellous, 2 *Campb.* 402. Hence it follows, that though the tendencies of measures may be temperately discussed, they must never be imputed to *corrupt design;* that no member of the government must be charged with corruption, or with a wish to infringe on the liberties of the people.

To publish a true and fair account of proceedings in *courts of justice* upon a trial, is not in general libellous, 8 *T. R.* 298. But a party will not be justified in publishing *conclusions* unfavourable to another, which he draws himself from the evidence delivered in a court of justice, instead of stating the evidence itself. The publication of proceedings before a coroner's inquest, or a preliminary inquiry before a magistrate, however correct the statement, if it contains libellous matter of another, is actionable, 3 *Chitty's Bl.* 124. But an *abridged account* of a proceeding in a court of justice, if correct, though it contains matter defamatory of an individual, appears to be privileged. In charging the jury in *Lewis* v. *Lery* (Court of Queen's Bench, Dec. 2, 1857), Lord Chief Justice Campbell said,—"You are the guardians of private character, as well as the guardians of the liberty of the press. It is of the last importance that a privilege should exist of giving fair and correct reports of what passes in courts of justice, without incurring any liability in respect to their contents: it is also of the last impor-

t this privilege should not be abused ; and you are to say
n your opinion it has been abused in the present case. It
dmitted that parties are not called upon always to give
reports of proceedings in courts of justice ; that would
privilege illusory, and is only done in very important
ll that can be accomplished is to give a fair and accurate
nt of what occurs, taking care that no partiality is shown,
reasonable care and skill are exercised so that it may be
ount." If the jury thought that the reports were fair
hey must find for the defendant, which they did. But
correct report without malice is allowable of judicial pro-
is not everything said in a court of justice that may be
with impunity. For instance, a person would not be
in publishing anything blasphemous or immoral, merely
t was uttered in open court (Court of Exchequer, May
).
er by a party to the bishop of the diocese, informing him
rt of misconduct of an incumbent of the district, bringing
n the church, if found by the jury to have been *bonâ fide*
from malicious motive, has been held to be a privileged
cation.
t of general gaol delivery has the power to make an order
bit the publication of the proceedings, pending a trial
continue for several successive days, and to punish dis-
to such order by fine ; and the court of Chancery will
s a contempt of court, any attempt to prejudice the minds
iblic against persons concerned as parties in causes, before
is finally heard.
gs reflecting on the memory of the dead are punishable,
it appear the author intended, by the publication, to hurt
igs of, or to bring dishonour and contempt on, the relations
ceased.
and candid comment on a place of public entertainment,
rspaper, is not a libel. Nor a comment upon a literary
n, exposing its errors and absurdities, and holding up the
o ridicule ; providing such comment do not exceed the
fair and candid criticism, by attacking the domestic or
bits of the writer, unconnected with his work. But if a
nder pretence of criticising a literary work, defame the
haracter of the author, and, instead of fairly discussing
ts, travel into collateral matter, introducing facts not
the work, accompanied with injurious comments upon
ch person is a libeller, and liable to an action.
criticism on the works of a professional artist, in the
his professional employment, however mistaken it may
t libellous ; if it is unfair and intemperate, and written
purpose of injuring the party criticised, it is actionable.
Knight, Moo. & Malk. 74.

A party who pursues an *unlawful* vocation has no ri
action for any libellous comments regarding his conduct
vocation.

It is not competent for a man charged with libel to ju
urging that one similar to that for which he is prosecuted
lished on a former occasion, by other persons, who were n
cuted, 5 *T. R.* 436.

Though *malice* is an essential requisite in every crimi
yet the act of publication is deemed presumptive evi
malice, which the defendant will be required to disp
printers and publishers have been repeatedly convicted
was certain, from absence or otherwise, they were ignora
contents of the papers they were assisting to circulate by
their servants or agents.

The party who writes a libel dictated by another, and
cretion to understand its nature—he who originally proc
be composed—he who actually composes it—he who print
cures it to be printed—he who publishes, or causes it t
lished—all, in short, who assist in framing or in diffusin
implicated in the guilt of the offence.

As to the privilege of the HOUSE OF COMMONS, in r
libels, there have been two decisions. In *Beaumont* v.
Lord Tenterden held that the publishing of matter reflect
the character of an individual cannot be justified by the
such matter was a correct and impartial copy of a parli
report, *K. B. Nov.* 1, 1827.

In the sessions of 1835 and 1836, the House of Commo
resolutions that parliamentary papers and reports printed
use of the house should be publicly sold by their printe
report from the inspectors of prisons was afterwards ordere
house to be printed: upon which Chief Justice Denman l
if the report contained a libel on an individual, the print
House of Commons, who sold it, was liable to an action,
the resolutions of the house did not render this a privile
munication. *Stockdale* v. *Hansard*, 7 C. & P. 731. Bu
tions of both houses were passed in 1845, contravening th
of the Queen's Bench: and persons who conceived themse
jured by false evidence given against them to committees
house, having brought actions to vindicate their charact
the slander, both houses, on being informed by petition of
sued that such actions had been brought against them, ser
plaintiff and his attorney, and by threats compelled the
their actions, and so far submit to the imputations brough
them. This was done in the exercise of the alleged priv
parliament.

Upon this basis the question seems settled by 3 V. c.
affords a summary protection to all persons employed in t
cation of any reports, papers, votes, or proceedings that eit

of parliament deems necessary to be published, by enabling the parties to adduce, before any court, the certificate of the lord chancellor, or speaker of the House of Commons, attesting that such publication had been ordered. (See p. 20.)

II. LORD CAMPBELL'S LIBEL ACT.

In the preamble to this act, the 6 & 7 V. c. 96, it is declared to be for the better protection of private character, and for more effectually securing the liberty of the press, and the prevention of abuses in its exercise. With these objects it is provided, that in any action for defamation it shall be lawful for the defendant to give in evidence, in mitigation of damages, that he offered an apology to the plaintiff for such defamation before the commencement of the action, or as soon afterwards as he had an opportunity, in case the action shall have been commenced before there was an opportunity of offering an apology. In an action for libel contained in any public newspaper or other periodical publication, it is competent to the defendant to plead that such libel was inserted without actual malice, and without *gross negligence;* and that before the commencement of the action, or at the earliest opportunity afterwards, he inserted a full apology for the libel, or, if the newspaper or periodical publication in which the libel appeared be ordinarily published at intervals exceeding one week, had offered to publish the apology in any newspaper or periodical publication to be selected by the plaintiff; and the defendant is at liberty to pay into court a sum of money by way of amends for the injury sustained.

By ss. 3-5, if any person publish or threaten to publish any libel upon any other person, or directly or indirectly threaten to print or publish, or directly or indirectly propose to abstain from printing and publishing, or directly or indirectly offer to prevent the printing or publishing, of any matter touching any other person, with intent to *extort any money or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust,* every such offender, on being convicted, is liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding *three years.* Any person maliciously publishing any defamatory libel, *knowing the same to be false,* and being convicted, is liable to be imprisoned for any term not exceeding two years, and to pay such fine as the court may award. Any person maliciously publishing any defamatory libel, and being convicted, is liable to fine or imprisonment, or both; such imprisonment not to exceed the term of one year. On the trial of any indictment or any information for a defamatory libel, the truth of the matters charged may be in-

quired into, but not amount to a defence unless it was for the *public benefit* that the matters charged should be published; and to entitle the defendant to give evidence of the truth of such matters it is necessary for him to allege the truth of the matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege the particular fact or reason establishing the public benefit resulting from the publication; to which plea the prosecutor is at liberty to reply generally, denying the whole; and if after such plea the defendant is convicted, it is competent to the court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by his plea, and by the evidence given to prove or to disprove the same; but the truth of the matters charged in the alleged libel is no case to be inquired into without such plea or justification. When, upon the trial of any indictment or information for a libel, under the plea of not guilty, evidence shall have been given that shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, the defendant shall be allowed to prove that such publication was made without his authority, consent, or knowledge, and that the publication did not arise from want of due care or caution on his part. In the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs incurred; and upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs incurred.

Lord Campbell's act does not extend to Scotland; but it was extended to Ireland by 8 & 9 V. c. 75.

III. PUBLICATION OF LIBEL.

The communication of a libel to any one person is a publication in the eye of the law; and, therefore, the sending an abusive private letter to a man is as much a libel as if it were openly printed, for it equally tends to a breach of the peace. If A. send a manuscript to the printer of a periodical publication, and do not restrain the printing or publishing of it, and he prints and publishes it in that publication, A. is liable as the publisher, 5 *Dow.* 501. But if a libel be stolen, this is no publication. The delivery of a newspaper to the officer at the stamp office is a publication, 4 *B.* & *C.* 35. It has been questioned whether the writing and composing a libel with an *intent* to publish, but not followed by publication, be an indictable offence; at all events, it appears that the finding the paper in the handwriting of the defendant is such *primâ facie* evidence of publication by him as to admit the writing to be read to

the jury, from which the jury may infer the publication according to the circumstances before them, *Rex* v. *Burdett*, 4 *B.* & *A.* 95.

The sale of a libel in a shop is evidence of publication in a prosecution against the master, and is sufficient for conviction, unless contradicted by contrary evidence, showing that he was not privy, nor in any degree assenting to it.

By the 32 G. 3, c. 60, the functions of juries on trials for libel are more precisely ascertained and discriminated. Prior to this act, it had been frequently determined that the only questions for the consideration of the jury were the *fact* of the publication and the truth of the innuendoes, that is, the *meaning* of the passages of the libel, as stated in the record; and the court alone was competent to determine whether the matter of the publication was or was not libellous. But the 32 G. 3 provides, that on every trial of an indictment or information for libel, the jury may give a *general verdict* of guilty or not guilty, and shall not be required or directed by the judge to find the defendant guilty merely on proof of publication, and of the sense ascribed to the libel in the record.

The punishment for either making, repeating, printing, or publishing a criminal libel is fine, or fine and imprisonment, proportioned to the nature of the offence and rank of the offender.

When a person is brought up to receive judgment, his conduct subsequent to his conviction may be taken into consideration, either by way of aggravation or mitigation of the punishment.

CHAPTER II.

Slander.

SLANDER, or evil-speaking, consists in maliciously and falsely speaking of another, charging him with the commission of an offence punishable by law, as treason, murder, larceny; or which may exclude him from society, as with having an infectious disease; or which may hurt his trade or livelihood, as to call a tradesman a bankrupt, a physician a quack, or a lawyer a knave.

Words imputing an indictable offence are actionable or not, according to the sense in which they may be understood by bystanders not acquainted with the facts to which they may relate, and which may render them privileged, and the secret intent of the speaker is immaterial, *Hankinson* v. *Bilby*, 16 *Mees* & *W.* 442.

Words of heat, anger, or passion, spoken without deliberation, as to call a man a rogue, a scoundrel, a villain, a fool, a liar, if productive of no evil consequences, are not actionable; neither are words spoken by the *defendant*, or counsel, in judicial course,

if pertinent to the matter in question. The imputation of a mere defect or disregard of moral or religious duties is insufficient to sustain a prosecution, 4 *Taunt.* 355. To call a man a heretic, or adulterer, is cognizable only in a spiritual or divorce court, unless temporal damage ensue.

To constitute *legal* slander, some precise crime must be imputed, or real injury sustained. Hence, it is actionable to say a man is a highwayman; but it is not so to say he is *worse* than a highwayman. To render words actionable, they must be uttered without *legal* occasion. On some emergencies it is justifiable or excusable to utter slander of another, provided it be without malice. So, false and scandalous matter contained in articles of the peace, exhibited to justices; or the declaration of a court-martial, that the charge of the prosecutor was malicious and groundless, is not actionable. The accusation of a mere *intent*, *propensity*, or *inclination* to commit a crime is not actionable, because it only imputes an inchoate delinquency, and not the actual commission of a crime, for which the party accused could be punished. But an accusation of seducing another to commit a crime, as subornation of perjury, or of soliciting a servant to steal, is actionable. A verbal charge of incontinence against a modest woman is not slander cognizable in the temporal courts, except the city court: and even there the cause of action must arise within the jurisdiction of the city of London. But words not actionable in themselves may become so by reason of some special damage arising from them; as if you say to a woman, *You are a whore*, whereby she loses her marriage, or a substantial benefit arising from the hospitality of friends, 1 *Taunt.* 39. So, if a person slander the title of another, whereby he is prevented from selling his estate. But, in such cases, it is necessary not only to prove the *uttering* of the words, but the *injury* sustained. Words which impute the want of integrity or capacity, whether mental or pecuniary, in the conduct of a *profession*, *trade*, or *occupation*, in which the party is engaged, are actionable. Thus, an action for libel will lie for accusing a clergyman of incontinence, &c., for which he may be deprived; or a barrister, attorney, or artist, of inability, inattention, or want of integrity; or a person *in trade* of fraudulent or dishonourable conduct, or of being in insolvent circumstances, 5 *B. & Cr.* 180. To say to one who carries on the business of a corn vendor, "You are a rogue and a swindling rascal; you delivered me one hundred bushels of oats, worse by 6*d.* a bushel than I bargained for," is actionable, and entitles to a verdict without proof of special damage. But an action is not sustainable for saying a tradesman has charged an exorbitant price for his goods, unless fraud be imputed. In all these cases the words are actionable without proof of special damage, because they have a direct tendency to injure the party accused in his business or profession.

It is actionable to republish any slander invented by another,

unless the republication be accompanied by a disclosure of the author's name, and precise statement of the author's words, so as to enable the party injured to maintain an action against the original author. Words spoken in derogation of a peer, a judge, or other great officer of the crown, which are called *scandalum magnatum*, are held to be still more heinous; and though they be such as would not be actionable in the case of a common person, yet, in this, they amount to a serious offence. Words, also, tending to scandalise a magistrate, or person in public trust, are deemed more criminal than in the case of a private man.

CHAPTER III.

Personal Injuries.

THE following injuries are such as chiefly affect the *personal* security of individuals.

1. THREATS and menaces of bodily hurt, through fear of which a man's business is interrupted: this is incipient, though not actual violence, for which compensation may be had by action.

2. ASSAULT, which is an attempt or offer to do corporal injury to another; as by holding up the fist in a menacing manner, striking with a cane or stick, though the party miss his aim; throwing a bottle or glass, with intent to wound or strike. But to constitute an assault, there must be an *intention* to use actual violence, coupled with the *ability;* the party aimed at must be within reach of the fist or the weapon lifted or levelled against him.

3. BATTERY, which also includes assault, is the unlawful beating of another: the least touching of another person in a rude and angry manner is *battery;* every man's person being held inviolate, and no one having a right to meddle with it in the slightest degree. But battery is justifiable where the party has authority; as a parent or master may give moderate correction to his child, scholar, or apprentice.

4. MAYHEM, or, as it is more correctly written, *maihem*, is an injury more atrocious than the preceding, and consists in violently depriving another of the use of such members as may be useful to him, either to defend himself or to annoy his adversary. Among such defensive members are reckoned not only our arms and legs, but a finger, an eye, and a fore-tooth. But the loss of one of the jaw-teeth, the ear, or the nose, is no mayhem at common law, as they can be of no use in personal defence. The distinction between legal maiming and corporal maiming, as punished by 24 & 25 V. c. 100, is now obsolete, or nearly so.

For the three personal injuries of assault, battery and may-

hem. an indictment may be brought as well as an action ; the one at the suit of the crown for the crime against the public, the other at the suit of the party injured, to obtain reparation in damages. But, in general, the adoption of both proceedings is considered vexatious, and will induce the jury to give smaller damages in the action. The legislature, too, has discouraged actions for trifling injuries of this nature, by enacting that in all such cases the plaintiff, if he does not recover more than £5 damages, shall have no costs unless the action be brought to try a right, or the grievance was wilful and malicious, 23 & 24 V. c. 126.

5. FALSE IMPRISONMENT may be included under the head of personal injuries, and consists in the unlawful detention of the person without legal authority. Every species of confinement is an imprisonment, whether it be in a common prison, in a private house, in the stocks, or even by forcibly detaining one in the public streets.

The legal restraint of personal liberty must arise either by process from the courts of justice, or by warrant from a legal officer, having power to commit under his hand and seal, and expressing the cause of committal ; or from some special power warranted either by the common law or act of parliament ; such as the power of a private person, without warrant, to arrest felons or apprehend vagrants.

False imprisonment, however, may arise from executing a legal process at an improper time ; as by arresting in a civil suit on Sunday. The circumstance of an imprisonment being committed under a mistake constitutes no excuse, 3 *Wills.* 309.

CHAPTER IV.

Adultery.

DURING the Commonwealth adultery was made a capital crime, and several unsuccessful attempts have been subsequently made to bring it within the pale of criminal jurisdiction. Adultery, therefore, continues to be considered only a civil injury ; but by the Divorce Act (p. 62), in lieu of the former action for criminal conversation, by way of equivalent for the husband's wrong, the adulterer is made co-respondent in the suit, and liable for costs ; and in certain cases for damages on behalf of the injured party.

The damages in cases of *crim. con.* depend on the rank and quality of the plaintiff ; the condition of the defendant—his being a friend, relation, dependant of the plaintiff ; the nature of the seduction as founded on the previous behaviour of his wife, and her character ; and the husband's obligation, by settlement or

otherwise, to provide for the children, which he cannot but suspect to be spurious.

To enable the husband to maintain his action, there must be no imputation of his having courted his own dishonour, or of his having been instrumental to his own disgrace. So, if the wife be suffered to live as a prostitute with the privity of the husband, and the defendant has thereby been drawn in to commit the act of which the husband complains, the action cannot be maintained.

If the husband live separate from his wife, in consequence of mutual agreement, in which he gives up all claim to be derived from her *society*, he is not entitled to maintain an action for her seduction.

Lord Kenyon held, that where a husband kept a mistress, he was not entitled to maintain an action for adultery; but in a subsequent case, of *Bromley* v. *Wallace*, 4 Esp. 237, Lord Alvanley was of opinion, that, unless the husband lives so much with other women as amounts to total abandonment of his wife, it is only a circumstance which affects the damages.

The EVIDENCE of the fact of adultery, which, from its nature, is usually circumstantial, must be sufficient to satisfy the jury that an adulterous intercourse has actually taken place. Proof of familiarities, however indecent, is insufficient, if there be reason to apprehend, from the fact of the parties being interrupted, or any other circumstance, that a criminal connection has not been consummated. The Evidence Further Amendment Act, 1869, has now provided that the parties to any proceeding instituted in consequence of adultery, and the husbands and wives of such parties, shall be competent to give evidence, but no witness is liable to be asked whether he or she has committed adultery.

The defendant may show, in mitigation of damages, that the wife had before eloped, or had been connected with others: that she had borne a bastard before marriage: that she had been a prostitute previous to her connection with the defendant: but he cannot give evidence of the general reputation of her being or having been a prostitute, for that may have been occasioned by her familiarity with him. For the same purpose he also may give in evidence that she was a woman of loose conduct, and notoriously bad character: that she made the first overtures and advances to the defendant: that his means and expectations are inconsiderable.

It may be further urged, that the husband carried on a criminal correspondence with other women in an open and undisguised manner, or that he treated his wife harshly or unkindly, or that they did not live happily together.

CHAPTER V.

Seduction.

In the session of 1849, an effort was for the first time made to protect females from certain fraudulent practices, well known to be resorted to by infamous persons to procure their defilement. By the 24 & 25 V. c. 100, s. 49, if any person shall, by false pretences, false representations, or other fraudulent means, procure any woman or girl under the age of twenty-one years, to have illicit carnal connection with any man, such person is guilty of a misdemeanour, and liable to be imprisoned, with or without hard labour, for a term not exceeding two years.

This statute applies only to third parties employed in the odious office of procuration, and still leaves unpunishable, either as a civil or criminal wrong, the direct seduction of females. Accordingly, it appears to be only indirectly, by the consequences of illicit intercourse, not for the perpetration of the act itself, that the male transgressor is made accountable for his misconduct. Unless a woman has had a promise of marriage she can obtain no reparation for the injury she has sustained from her seducer. It is only by a fiction of law, the supposed and less endearing relation of master and servant, and consequent *loss of service* the parent has sustained in consequence of the pregnancy of his daughter, that he can maintain an action against the seducer, for the wrong done to his family. The action may be also brought by a relative, a master, or any one under whose protection a female resides; the loss of service being the legal principle on which it rests; and, therefore, it has been extended to the case of one suing for the seduction of his adopted child, or even to a father suing for the seduction of his *married daughter*, serving in his family, apart from her husband, *Harper* v. *Lufkin*, 1 M. & R. 166.

It is immaterial what is the *age of the daughter;* but it is necessary that at the time of the seduction she should be living in, or be considered as part of, her father's family. It has been held that a young woman, who was upon a visit at a relation's house, and there seduced, might be considered, in support of this action, as in the service of her father, or as part of his family. But it has been decided that this cannot be maintained by the father, if at the time of the seduction she is living in another family, and has no intention of returning to her father's house, though she is under the age of twenty-one.

The damages, as in actions for adultery, are proportioned to the previous character of the female, and the rank and situation of the plaintiff and defendant; and the female is a competent witness

on the trial, and is usually brought forward to prove the fact of seduction. The state and situation of the family should be proved in aggravation of damages, and, if such be the fact, that the defendant professed to visit the family, and was received as the suitor of the daughter. The defendant may, in mitigation of damages, adduce any evidence of the improper, negligent, or imprudent conduct of the plaintiff himself; as, where he knew that defendant was a married man, and allowed his visits in the probability of a divorce, Lord Kenyon held the action could not be maintained, *Peak*, R. 240.

Besides the ordinary suit for damages, another action for seduction is a common action for *trespass*, which may be brought when the seducer has illegally entered the father's house, in which action the debauching his daughter may be stated and proved as an aggravation of the trespass. Or, where the seducer carries off the daughter from her father's house, an action might be brought for enticing away his servant. In these two actions the seduction may be proved, though it may not have been followed by the consequences of pregnancy.

These are the only remedies which have been extended by the modern ingenuity of the courts, to enable an unhappy parent to recover a recompense, under certain circumstances, for the injury he has sustained by the seduction of his daughter. But though the law affords such slender protection for the chastity of females, when consenting to their own degradation, yet it has been cautious in protecting their persons from the assaults of violence, and also in guarding their property from any who may seek to obtain possession of it by forcible marriage, which last, as will appear under the head of ABDUCTION, is a highly penal offence.

CHAPTER VI.

Trespass.

TRESPASS is, generally, any act whereby another is injured in person or property; but, in a more limited and common acceptance, it signifies an entry upon another man's ground without his permission, especially if contrary to his order, and doing some damage, however inconsiderable, for which a compensation is recoverable, according as the intent of the trespasser was wilful or inadvertent, and the damage actually sustained.

Every man's ground, in the eye of the law, is enclosed either by a visible fence or imaginary boundary line, and whoever enters upon it without leave of the owner is a trespasser.

But a person is answerable not only for his own trespass, but that of his cattle; for if, by negligent keeping, they stray upon

the land of another and tread down the herbage, or commit other injury, this is a trespass for which the owner must answer in damages.

In some cases trespass is *justifiable*, as if one come to demand or pay money, there payable or due; or to execute, in a legal manner, the process of law. Also a man may justify entering into an inn, or public-house, without leave of the owner, because when a man professes to keep such accommodation, he gives a general license to any person to enter his doors. So, a landlord may justify entering to distrain for rent; a commoner to attend his cattle commoning on another's land; and a reversioner to see if any waste be committed on the estate.

But in cases where a man misbehaves himself, or abuses the authority with which the law invests him, he becomes a trespasser; as if a person come into a tavern, and will not go out in a reasonable time, but stays there all night, contrary to the inclination of the owner, he makes himself a trespasser from his first entry.

An exclusive interest in the crop or herbage, without a property in the soil, is sufficient to maintain an action of trespass. But possession, actual or constructive, must be proved. If trees are excepted in the lease, the land whereon they grow is necessarily excepted also; consequently, the landlord may maintain trespass *for breaking his close*, if the tenant cut down the trees.

II. TRESPASSES IN SPORTING.

The common law allows the hunting of foxes, badgers, and such noxious animals, over the ground of another man for the public good, and excuses a trespass done in the pursuit of them: provided in doing this no more damage is done than is necessary, and inevitable, and that it is done in the usual and ordinary course. But the law will not justify any excessive damage to the land; for, even in hunting the fox or badger, a man must not break the ground or dig for him.

In general, it is a trespass at common law for any man to search for game on another's ground, for which the owner or tenant may maintain his action. No lord of a manor can justify sporting over another's ground unless he have grant of free-warren over such man's ground. And it seems doubtful, after the decision of Lord Ellenborough, in the *Earl of Essex* v. *Capel*, Hertford Assizes, A.D. 1809, whether the hunting of a fox over the grounds of another, without leave of the owner, is not a trespass; at all events, to unbag a fox, and pursue him over another's ground, would be a trespass.

In an action of trespass for sporting over the ground of another, the jury may take into consideration, in determining the verdict, not only the actual damage sustained by the plaintiff, but circum-

ances of aggravation and insult on the part of the defendant. ıus, in *Merest* v. *Harvey*, where the defendant, a magistrate, had mmitted the trespass before the plaintiff's face, in defiance of tice that he was a trespasser, and had accompanied it by every nd of insult, a verdict was given for £500 damages; and the urt of Common Pleas, in a motion for a new trial, refused to duce them, though the plaintiff had sustained no actual pecuniary jury, 5 *Taunt.* 442.

To prevent trifling and vexatious actions of trespass, it is pro- ded by statute, that, where the jury who try an action of trespass ve *less damages than* £5, the plaintiff shall be allowed no costs ıless the action were brought to try a right, or the trespass were lful and malicious, 23 & 24 V. c. 126, s. 34. Some former ıtutes provided that where the damages were under 40*s.* the ıintiff should recover no more costs than damages.

Every trespass is deemed *wilful* where the defendant has notice d is forewarned not to come upon the land; as every trespass is *ılicious* where the intent of the defendant plainly appears to be harass and distress the plaintiff; and, in such cases, the judge bound by statute to certify accordingly, which entitles the plain- f to FULL costs, whatever may be the amount of damage, or the ık and qualification of the defendant.

A more summary proceeding than by action against trespassers ɔrovided by the Game Act, 1 & 2 W. 4, c. 32, which enacts, ; any person trespassing in the *daytime* in pursuit of game, or lcocks, snipes, quails, landrails, or coneys, shall, on conviction, -e a justice of the peace, forfeit any sum not exceeding £2, the costs of conviction; and if any persons, to the number of or more together, commit a trespass in like manner, each forfeit £5, with costs of conviction. Such trespassers not ıg the ground when required, or refusing to give their ad- may be arrested and taken before a magistrate, and, on ion, be fined not exceeding £5. See further, 6 & 7 W. 4, 7 & 8 V. c. 29; 25 & 26 V. c. 114.

CHAPTER VII.

Malicious Prosecut ion.

may be severely injured in his person, property, or by malicious indictments or prosecutions being preferred n, for which there is no ground but the malice or the plaintiff: the remedy for this species of injury on on the case.

ıds of an action for malicious prosecution are, the he charge, the malice of the defendant, either express

[illegible] ... [illegible] ... [illegible] ... [

CHAPTER VIII.

Nuisance.

A PRIVATE nuisance, as distinguished from a common or public nuisance, which will fall under the class of criminal offences, may be defined an injury or annoyance to the person or property of an individual.

If a man build a house so near to mine that his roof overhang my roof and throw the water off his roof upon mine, this is a private nuisance, for which an action will lie. Likewise to erect a house or other building so near mine that it obstructs my light and windows is a nuisance. But in this case it is necessary the windows be *ancient*, that is, have subsisted there a long time without interruption, otherwise there is no remedy. An uninterrupted enjoyment for twenty years is sufficient to support an action on the case for this disturbance of it. But a right thus acquired must be limited in degree by the *use made of it;* a person by the use of a *portion* of a stream for twenty years does not thereby acquire a right to the use of the *whole*, or any quantity larger than that proportion; or by the enjoyment of light and air through a small window, to the same enjoyment through one of a larger size.

If an ancient window has been completely blocked up above twenty years, it loses its privilege, 3 *Camp.* 514; and even the presumption of right from twenty years' uninterrupted enjoyment was excluded by the custom of London, which entitled every citizen to build upon an ancient foundation as high as he pleases. But this custom is now abolished.

If I have, by prescription or otherwise, a right of *way* annexed to my estate across another's land, and he obstruct me in the use of it, either by totally stopping it, or putting logs across it, or ploughing over it, it is a nuisance; for, in the first case, I cannot enjoy my right at all; and in the latter I cannot enjoy it so commodiously as I ought to do.

To keep hogs near one's house, or to exercise any offensive trade as a tanner, tallow-melter, soap-boiler, or the like, are all nuisances, for which an individual has remedy by action.

So, also, is it a nuisance if life be made uncomfortable by the apprehension of *danger*, as by keeping great quantities of gunpowder near dwelling-houses, 2 *Str.* 1167. And, in the *Duke of Northumberland* v. *Clowes*, where defendant employed a steam-engine in his business as a printer, which produced a continual noise and vibration in the plaintiff's apartments, which adjoined the premises of the defendant, it was held a nuisance. In *Watson* v. *Clement* a verdict on similar principles was given.

In 1872, an act (35 & 36 V. c. 61) was passed by which it was provided that no person should use any steam-whistle or steam-trumpet for the purpose of summoning or dismissing workmen or persons employed without the sanction of the authority for the time being empowered to execute the Nuisance Removal Acts, under a penalty of £5, and a fine of 40s. for every day during which the offence continues.

All offences against this act are to be prosecuted and recorded in England in manner directed by 11 & 12 V. c. 43, and acts amending the same.

It is a nuisance to erect a smelting-house for lead so near the land of another that the vapour or smoke kills or injures his corn or grass. It is a nuisance to stop or divert water that runs to another's meadow or mill; to corrupt or poison a watercourse; to erect a dye-house or lime-pit in the upper part of the stream; or, in short, to do any act that tends to the prejudice of a neighbour.

But depriving one of a mere matter of *pleasure*, as of a fine prospect, by building a wall or the like,—this, as it abridges nothing really necessary or convenient, is not an injury for which there is remedy at law.

If I am entitled to hold a *fair* or *market*, and another person sets up a fair or market so near mine that he does me a prejudice, it is a nuisance to the freehold which I have in my market or fair.

But, in order to make this out a nuisance, it is necessary,—1. That my market or fair be the elder, otherwise the nuisance lies at my own door. 2. That the new market be erected within the third part of twenty miles from mine. For Sir Matthew Hale construes the *reasonable day's journey*, mentioned by Bracton, to be twenty miles. So that if the new market be not within seven miles of the old one, it is no nuisance; for it is held reasonable that every man should have a market within one-third of a day's journey from his home; that, the day being divided into three parts, he may spend one part in going, another in returning, and a third in transacting his necessary business there.

If a ferry be erected on a river so near another *ancient* ferry as to draw away its custom, it is a nuisance to the old one; for where there is a ferry by *prescription*, the owner is bound to keep it always in repair and readiness, with expert men and reasonable toll, for neglect of which he is liable to punishment by indictment; it would, therefore, be hard if another ferry were to share the profits which does not share the liabilities.

But where there is no *prescriptive* right, there can be no exclusive privilege. So, it is no nuisance to erect a mill so near mine as to draw away the custom, unless the miller also intercept the water. Neither is it a nuisance to set up any trade or school in a neighbourhood in rivalship with another; for, by such competition, the public is benefited; or if the new mill or school

occasion a damage to the old one, it is a loss without legal compensation.

CHAPTER IX.

Negligence.

INDIVIDUALS are not only required to refrain from what the law prohibits, but are also required, under peculiar circumstances, to do acts, the omission of which may cause loss or detriment to others. Negligence or folly may be productive of injury, for which the party injured may bring an action on the case. Every man ought to take care that he does not injure his neighbour; and, therefore, when a man receives any hurt either in his person or property through the default of another, whether by doing some act, or by neglect of any duty, though the same was not wilful, yet if it be occasioned by negligence, the law gives him this action to recover damages for the injuries sustained; as where the defendant, by uncocking his gun, accidentally wounded the plaintiff, who was standing by to see him do it; or where a man retains an attorney to conduct a cause, and he, by some omission, loses it, and thereby injures his client; or, when a person bound to clean a ditch, suffers it to become so foul, that his neighbour's land is overflowed, and injured. In such cases it is no defence for the defendant to allege that the injury was involuntary on his part, or that, by proper attention, the person who received the injury might have avoided it; but if the injury was occasioned by the plaintiff's own neglect, the action is not maintainable.

PART VI.

CRIMES AND PUNISHMENTS.

WE have now arrived at the last and more important division of the Laws of England, embracing the consideration of those delinquencies which, from their aggravated character, or more dangerous influence on the well-being of the community, are made the subject of criminal punishment. For the repression of private injuries, the law has mostly provided only retribution or compensation in damages; but such atonement would be an inadequate and dispro-

portionate check on offences which endanger the person and life, as well as the dwellings and property of individuals: except, however, in their greater enormity, and the different mode of procedure, there is no substantive distinction between public and private wrongs. Every private offence, when openly committed, is, in some degree, a crime against the public, by its evil example, and tendency to disturb that peace, order, and security, upon the due maintenance of which social happiness depends; consequently, the classification of offences into private injuries and public crimes, refers only to gradations of turpitude, the first of which is adequately restrained by individual prosecution, the latter requiring the strong arm of the magistrate, and the terror of a more public and ignominious infliction.

Above forty years have elapsed since public attention was first forcibly directed to the improvement of penal administration. Among the earlier legislative reformers may be reckoned Sir Samuel Romilly, Michael Angelo Taylor, and Sir James Mackintosh, from whose exertions resulted a mitigation in capital punishments, the abolition of the pillory, the whipping of females, and the rescinding, in part, the barbarous exhibitions and posthumous consequences of high treason. In 1825 Sir Robert Peel introduced the Jury Act, which consolidated and amended sixty-five statutes. This beneficial act was followed by others for improving the discipline of prisons, and secondary punishments; for consolidating and amending the criminal law by lessening the number of capital offences, and simplifying judicial procedure, and for giving greater efficacy and precision to the punishment of delinquents. Next was Lord Lansdowne's act for consolidating and better defining the law relative to offences against the person, including homicide, bigamy, rape, abduction, and assaults. The laws applying to offences against the coin and the Mint were reformed in 1832, under the auspices of Lord Auckland and Mr. Herries. In the same year and in the following, bills were introduced and carried by Mr. Ewart and Mr. Lennard, for abolishing capital punishment for cattle and sheep-stealing, and stealing in a dwelling-house. Subsequently to these, several statutes were introduced under the auspices of Lord Campbell effecting salutary reforms in civil and criminal justice; namely, the act already mentioned for improving the law of libel, and the act for the abolition of deodands, and for providing compensation to sufferers in cases of homicide.

Lord Brougham, although last noticed, ranks among the early reformers both of the civil and criminal law; and it was to his persevering endeavours that the appointment of the commissioners on criminal law may be attributed, to whose elaborate and protracted inquiries may be ascribed the legal amendments in criminal law about to be noticed.

In the first parliamentary session of the present reign a series of eight criminal statutes, forming 1 V. c. 84, to 1 V. c. 91, was

introduced by Lord John Russell, effecting sundry important changes, the general design of which appears to have been to bring the criminal administration of the country into more perfect harmony with the state of morals, public sentiment, and popular intelligence. The main scope of these acts is more correctly to define offences against the persons and dwellings of individuals; to regulate, and, as respects the length of duration, mitigate the infliction of transportation, solitary confinement, and imprisonment; and, further, to lessen the number of capital punishments in certain specified cases, as for forgery of every description; for remaining riotously assembled one hour after reading the riot act; for rescuing prisoners committed for, or convicted of murder; for seducing soldiers and sailors from their allegiance; for administering unlawful oaths; for escaping a second time from the Penitentiary at Millbank; for carrying away persons into slavery from the coast of Africa; and for assembling armed to protect the landing of smuggled goods, or the rescuing of such goods, or maliciously shooting at the revenue officers: for all these offences the capital punishment is mitigated to transportation for life, or not less than fifteen years, or imprisonment not exceeding three years. A nicer graduation is also prescribed in the adjudication of secondary punishments, according to the degree of violence or terror by which the crime is aggravated. The absolute infliction of a fixed and unmitigable punishment to a whole class of crimes has been found, in practice, neither so successful as had been anticipated, nor in accordance with criminal equity and the moral sense of the community; a wider interval has been left between the maxima and minima of judgments; so as better to enable the courts to apportion punishment according to accompanying circumstances and the different shades of depravity in offenders.

By the 4 & 5 V. c 56, the punishment of death for rape was abolished, and transportation for life substituted. By the same act capital punishments have been abolished for the following offences: namely, embezzlement by a servant of the Bank of England or South Sea Company; for fraudulently using old deed stamps and other stamps, or for forging the stamp upon gold and silver plate in order to avoid paying the legal duties; for returning from transportation, and for riotously demolishing churches, chapels, and other enumerated buildings; in place of death punishment for these offences, transportation for life, or a term of years, or imprisonment for not less than three years, is substituted; and the offenders must be tried at the assize-court, not at the quarter sessions.

By these changes the crimes punishable with death were reduced to these:—1, treason; 2, murder; 3, attempt to murder, accompanied with actual injury to the person; 4, the burning of buildings or ships, with danger to human life, and under defined circumstances; 5, piracy, accompanied with acts endangering life;

They also further curtail the range of capital punishment by obliterating the difference between burglary simply, and when aggravated by cruelty or violence to the person.

Exclusive of the repealing act, and the act referring to procedure in the case of accessories, the five remaining acts refer—1, to offences against the person; 2, larceny, and similar offences; 3, malicious injuries to property; 4, indictable forgery; 5, offences against the coin. These changes, with the several antecedent alterations enumerated, affected almost the entire criminal law, and have been incorporated under their respective heads in the exposition of crimes and misdemeanours, or in the subjoined preliminary explanations.

Explanations.

I. CRIMES, TREASONS, FELONIES, MISDEMEANOURS.

Crime is a violation or disregard of a public law, comprehending every species of delinquency cognizable by the judges and magistracy, under the legal description of Treason, Felonies, and Misdemeanours.

Treason includes not only offences directed against the person and authority of the sovereign, but also those crimes whose aim is, by alarming confederacies, the intimidation of established power, the forcible redress of public grievances, or the alteration of the laws and institutions of the State. It formerly consisted of two degrees, High Treason and Petty Treason. The latter offence was designated by Lord Coke as "murder and more;" it was, however, merely murder, aggravated by the relation subsisting between the murderer and the victim, such as that of servant and master, or wife and husband, which was supposed to give the crime the depravity of a breach of menial or nuptial allegiance. This distinction causing much embarrassment in judicial procedure, and not being founded on any substantive difference, has been abolished, and petty treason assimilated in all respects to murder.

The punishment of treason is death, with certain discretionary additions; forfeiture of real and personal estate; corruption of blood; or the lesser infliction of penal servitude for life, or not less than three years; or imprisonment for not less than two years.

Felony includes the higher class of offences, as murder, rape, burglary, arson; and may be either capital or not. Capital felonies prior to late mitigations were punishable with death; they are now, with the exception of murder, punishable by penal servitude for life, or not less than three years, or imprisonment above two years, with or without hard labour or solitary confinement, to which, unless the offender be a female, whipping may be added. Minor felonies are punishable by penal servitude for fourteen, seven,

or shorter term of years, or imprisonment not above two years, to which, if a male under sixteen years of age, whipping may be added. The repetition of a felony is in most cases liable to an aggravated punishment.

Private persons may arrest felons by a warrant from a justice of peace, or even by their own authority, and are bound to assist a peace officer in taking them into custody.

Misdemeanour is generally used in contradistinction to felony, and comprehends all offences which do not amount to felony; as perjury, battery, libel, conspiracy, attempts and solicitations to commit felonies, and various injuries to property from a spirit of wantonness or revenge. Every infringement of a statute which either prohibits a matter of public grievance, or commands an observance of public convenience, though no penalty be mentioned in the statute, is a misdemeanour.

The punishment of misdemeanour is penal servitude for life, or shorter period, fine or imprisonment, or both, to which last hard labour, solitary confinement, or whipping, may, in many cases, be added.

The chief distinction subsisting between felony and misdemeanour was, till lately, that the former occasioned a total *forfeiture of lands or goods, or both*, at the common law; and to which capital or other punishment might be added, according to the degree of guilt. But it is proper to observe, that although forfeiture was an inseparable adjunct to felony, yet forfeiture of *land* only ensued where the punishment was capital; so that petty larceny, being a minor felony, did not occasion forfeiture of lands; every species of felony, however, was followed by forfeiture of goods and personal chattels.

The law, however, has been lately altered, and the 33 & 34 V. c. 23, now provides that from and after the passing of the act no confession, verdict, inquest, conviction, or judgment of or for any treason or felony, or felo-de-se, shall cause any attainder or corruption of blood, or any forfeiture or escheat, provided that nothing in the act shall affect the law of forfeiture consequent upon outlawry. But conviction for treason or felony is to be a disqualification for certain offices, &c. Persons convicted of treason or felony may be condemned in costs. Compensation is given to persons defrauded or injured by felony. A convict is disabled to sue for or to alienate property. The Crown may appoint administrators of any convict's property. Convicts' property is to vest in administrators on the appointment. Remuneration is provided for administrators, and they may let, mortgage, or sell the property, as they think fit. Administrator to pay out of property costs of prosecution and costs of executing the act. Administrators may pay out of property debts or liabilities of convict. Administrators may make compensation out of property to persons defrauded by criminal acts of convict. Administrators may make allowances out of property for

support of family of convict. Subject as aforesaid, the property is to be preserved for convict, and to revert to him or his representatives on completion of sentence, pardon, or death. Administrators are not to be liable except for what they receive. If no administrator is appointed, an *interim curator* may be appointed by justices of the peace. Proceedings may be taken to make administrator or *interim curator* accountable to convict when property reverts. Any property of convict acquired while lawfully at large is not to be subject to the operation of the Act.

By the 10th section of 33 & 34 V. c. 77. it is provided that no convict, unless pardoned, nor outlaw, is to be qualified to serve on juries or inquests, in any case.

The right of *peremptory* challenge by the accused, of jurors on trial, that is, the right of challenging, at mere pleasure, without assigning any cause, which exists in cases of treason and felony, is a peculiarity that distinguishes these classes of crimes from misdemeanours; and the right to challenge peremptorily to the number of thirty-five jurors in case of treason, and to the number of twenty only in cases of felony, is a distinguishing feature between treasons and felonies.

A difference between felony and misdemeanour till lately existed as to the right of restitution of stolen property; in felony the owner was entitled to the restitution of stolen goods, but not in misdemeanour. But this anomaly was removed by the 7 & 8 G. 4, c. 29, and the new act on larceny. The 24 & 25 V. c. 96, s. 100, provides, that of all property stolen or obtained by extorting, embezzling, converting, or disposing of, the owner, on prosecuting the thief or receiver to conviction, shall be entitled, by award of the court, before whom a felony or misdemeanour has been tried, to a restitution of his property. It is imperative on the court by writ, or in a more summary mode, to order restitution to the owner or his representative. In the case of summary convictions for theft of offenders under fourteen years of age, the justices, by the 10 & 11 V. c. 67, may order the restitution of stolen property.

The distinction between offences that are *indictable*, or subject to *summary* jurisdiction, forms a concluding noticeable division of crime. Besides treason, felonies, and misdemeanours, which are prosecuted by indictment and trial by jury, there is a numerous class of misdemeanours which are subject to the summary adjudication, without indictment or jury, of the magistracy, including, among others, petty thefts by juveniles, offences against the game laws, breaches of the peace, and disputes on wages.

By 8 & 9 V. c. 114, persons charged with, or indicted for, any felony or misdemeanour, and against whom no bill is found by the grand jury, or who on their trial have been acquitted or discharged by proclamation for want of prosecution, are no longer liable to the payment of any fee for their appearance under the accusations against them. Certain *fees heretofore* payable out of the county

rates to clerks of assize, or clerks of the peace, are also discontinued.

II. TRANSPORTATION AND PENAL SERVITUDE.

By 10 & 11 V. c. 67, persons under sentence of transportation may be removed to any prison or penitentiary in Great Britain. The difficulty of finding colonies for the transport of offenders has rendered it necessary in certain cases to substitute other punishments; and by 16 & 17 V. c. 99, in lieu of transportation, *penal servitude* is substituted in the following proportions: instead of transportation for seven years, or not exceeding seven years, penal servitude for four years; instead of any term of transportation exceeding seven years, and not exceeding ten years, penal servitude for not less than four and not exceeding six years; instead of any term of transportation exceeding ten years, and not exceeding fifteen years, penal servitude for not less than six and not exceeding eight years; instead of any term of transportation exceeding fifteen years, penal servitude for not less than six and not exceeding ten years; instead of transportation for life, penal servitude for life.

By s. 5, conditional pardons may be allowed with reference to the substituted punishments, as in cases of pardons on condition of transportation. Former acts concerning convicts sentenced to transportation made applicable to the purposes of this act. By s. 9, the crown may grant licenses, or *tickets of leave*, to convicts to be at large in the United Kingdom or Channel Islands, or in part of the same. Licenses may be revoked and the convict apprehended.

By 20 & 21 V. c. 3, sentences of transportation are abolished, and in lieu of such sentences penal servitude of proportionate duration is to be substituted. Provisions of the act concerning transported offenders to apply to offenders under penal servitude. Persons under sentence of penal servitude may, during the term of their sentence, be conveyed to any place beyond the seas to which offenders under sentence of transportation might be conveyed, and the acts relative to transports to be applicable to them. Magistrates may recommit convicts whose licenses are revoked to any convict prison. In the acts passed prior to this statute the term transportation in some cases has been retained, and for which the equivalent term of penal servitude under the 16 & 17 V. c. 99, must be understood.

The government of convict prisons abroad, and the management of offenders who have been sentenced to hard labour out of the Queen's dominions, are regulated by 22 V. c. 25. By s. 3, the powers of the directors of convict prisons are vested in the governors of colonies, and may be conferred by them on a comptroller and deputy chaplain, surgeon, and assistant, with sanction of secretary of

. Comptroller to have same authority as sheriff or gaoler in and. Every convict to be detained till absolutely or condi- ılly pardoned, removed by order of the secretary of state to : other prison, or discharged with license to be at large on such itions as expressed in this order. Introduction of spirituous ırmented liquors into prison subject to a penalty of £20 or : months' imprisonment. Except under the order of the comp- er, the introduction into prison of any clothing, provisions, s, or other articles, subject to a like punishment. Annual :ts to be made by the comptroller to the governor, to be for- ed to the secretary of state.

ıe preceding acts are amended by 27 & 28 V. c. 47, and no ın sentenced to penal servitude for any offence committed after to be sentenced for a period of less than five years, and where r any act in force a period of less than five years is the utmost :nce of penal servitude that can be awarded, a period of five ı shall be substituted for the less period; and where a period ther less or more than five years may be awarded, the least nce shall be a period of five years. A former conviction for y makes the least term of penal servitude seven years.

e conditions imposed on the holder of a *license* are, that he abstain from any violation of the law; shall not habitually iate with notoriously bad characters, as reputed thieves and itutes; shall not lead an idle and dissolute life; and if his se is revoked in consequence of a conviction for any offence, ill be liable to undergo a term of penal servitude equal to that pired when the license was granted. As the act has been in- eted by the Home Secretary to the Judges, steady and laborious stry alone, not general good conduct, can obtain any remission e assigned punishment. See *post*, 34 & 35 V. c. 112, p. 604.

III. PRISONS.

l prisons, whether in the keeping of the sheriff of the county, or corporation, belong to the Queen. In every county there be at least one common gaol, and one house of correction: a county is divided into ridings, having distinct commissions e peace, and assessments of county rates, there must be a : of correction for each riding. The houses of correction are he custody of vagrants and those summarily convicted by strates, or at quarter sessions, and justices have specially the ng of such gaols. But murderers and felons are imprisoned e common gaol, of which the sheriff has the keeping. Debtors lso imprisoned in the common gaol, if not removed by habeas s to the prison of the court whence the process issued. The : of correction for the county of Middlesex is a *legal* prison he safe custody of persons under a charge of high treason;

and the Tower is a legal prison for state prisoners, by immemorial usage. The Court of Queen's Bench may commit to any prison in England, and the persons so committed cannot be removed or bailed by any other court.

By 5 & 6 V. c. 22, the Queen's prison was made the only prison for debtors and bankrupts. By 25 & 26 V. c. 104, Queen's prison discontinued, and Whitecross Street substituted.

An act of 1865, the 28 & 29 V. c. 126, consolidated and amended the law in relation to the maintenance, government, discipline, enlargement, and rebuilding of prisons. Every place with a separate prison jurisdiction to provide at its expense an adequate prison, with a gaoler, chaplain, surgeon, and, if females are confined, a matron. If females only are confined the matron to be deemed the gaoler, and to perform the duties of such. By s. 17, separate cells to be provided for prisoners; and in case of criminals, they are to be prevented from holding any communication with each other by day or night, except when at chapel, or taking exercise under superintendence. Hard labour to consist of work at the treadwheel, shot-drill, crank, capstan, stone-breaking, or such other like description of bodily labour as justices in session, with the approval of the secretary of state, may appoint. A sufficient quantity of plain wholesome food to be supplied, regard being had to the labour required of convicts; but dietary tables to be approved by secretary of state. Inspector of prisons to leave a minute of his observations, s. 22. Plans for enlargement or rebuilding prisons, and contracts for supplies, to be approved by secretary of state; and the government allowance may be withheld from inadequate prisons. Assisting in any way prisoners to escape, subjects any one to imprisonment with hard labour for any term not exceeding two years. When term of imprisonment expires on Sunday, prisoner to be discharged preceding day. A sum not above £2 payable to a discharged prisoner, and, in addition, to be provided with means of returning to his home or place of settlement, s. 43. A prisoner dying, an inquest to be held over the body one clear day after. Distinctions between gaol and house of correction abolished. A prisoner may be removed from one prison to another under the authority of a secretary of state, s. 65. Appended to act is a schedule of regulations referring to the cleanliness of prisoners, the health of prisons, and the admission of visitors and spiritous liquors.

IV. JUVENILE AND OTHER OFFENDERS.

For the more speedy trial of juvenile offenders, and to avoid the evils of their long imprisonment before trial, it is enacted, by 10 & 11 V. c. 82, that persons not exceeding fourteen years of age, guilty of any theft that the law considers simple larceny, or aiding in its commission, may be summarily convicted by two justices, and

ntenced to imprisonment for not exceeding three calendar months, ith or without hard labour, or to forfeit any sum not exceeding 3 ; and, if a male, shall be once privately whipped, either instead or in addition to such punishment ; or the whipping may be flicted by a constable out of prison. Justices may dismiss the cused, if they deem it expedient not to inflict any punishment, ith or without sureties for future good behaviour, giving the cused a certificate of such dismission as a bar to future proceedgs. *One* police justice of the metropolis, or stipendiary magisate elsewhere, has jurisdiction under this act. Justices may der restitution of stolen property.

The provisions of this act are extended, by 13 & 14 V. c. 37, to venile offenders whose age does not exceed sixteen years ; but enders above fourteen not to be liable to the punishment of ipping. Justices acting under these acts are required to ask the cused if they wish the charge to be tried by a jury ; if either cused or parents object to a summary conviction, justices to oceed with the case as before the passing of the acts.

By 25 V. c. 18, where the punishment of *whipping* is awarded r any offence by order of one or more justices, or in Scotland by e court of justiciary, or by any sheriff or magistrate, the convicn shall specify the number of strokes to be inflicted and the strument to be used ; and in the case of an offender whose age es not exceed fourteen years, the number of strokes not to exceed elve, and the instrument used to be a birch-rod. No offender be whipped more than once for the same offence, and in Scotnd no offender above sixteen years of age to be whipped for theft, for crime committed against person or property.

V. LESSENING THE DELAY OF JUSTICE IN SMALL THEFTS.

By 18 & 19 V. c. 126, power is given to justices at petty sesn, or to any metropolitan or stipendiary magistrate acting singly, decide summarily in cases of theft, where the value of the thing olen does not exceed *5s.*, or in cases of attempt at theft, if the rties accused consent, but not otherwise. If consenting, the arge is then to be entered in writing, and if the person accused eads guilty, he is to be summarily condemned to the punishment ovided by law ; but if he plead not guilty, the case is to be gone to, witnesses are to be examined, and the accused may have the sistance of an attorney or a counsel. Where a person is charged th a theft exceeding *5s.* in value, he may plead guilty, and be ntenced forthwith, but he must be warned that he is not obliged plead. The magistrates before whom the case is heard (s. 5), ve power to remand persons for further examination ; forfeited cognizances are to be transmitted to the clerk of the peace, and nvictions and other proceedings are to be returned to the quarter

sessions. The justices under this act (s. 8) may order the restitution of property stolen or obtained by false pretences; and they may also order the payment of expenses. Every petty session for the purposes of this act must be an open court, and due notice is to be given of the time and place of its holding. Convictions under this act to have the same effect as a conviction on indictment, except that it shall not be attended with any forfeiture. In cases of injury to property, the justices may award a sum of money to be forfeited, and paid as compensation to the parties aggrieved, although they may have been examined as witnesses, s. 22.

Closely connected with the preceding is the act of 1865, the 28 & 29 V. c. 127, for the commutation of small penalties on summary conviction by imprisonment. By s. 4, when any offender is adjudged to pay a penalty not exceeding £5, such offender, in case of non-payment, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty be sooner paid. For a penalty not exceeding 10*s.*, the imprisonment is not to exceed seven days; for a penalty not exceeding £1, fourteen days; for a penalty not exceeding £2, one month; and exceeding £2 and not exceeding £5, the imprisonment is not to exceed two months. By s. 5, the power of imposing hard labour in addition to imprisonment, in cases where hard labour might on non-payment have been so imposed if the act had not been passed, is not to be affected; and it is to apply to penalties including costs recoverable in a summary manner under any act passed before or after the commencement of the same. The act is limited to England, and does not apply to penalties under the revenue laws.

VI. RESPONSIBILITY FOR CRIMES.

Certain persons, from age, natural infirmity, or want of freedom of will, are deemed incapable of committing crimes, and are exempt by law from criminal responsibility.

An *infant* under the age of seven years cannot be guilty of felony; above the age of seven, if it appear that he has capacity to discern between good and evil, he is capable of guilt according to his discernment; but the presumption continues in favour of his innocence till he attain the age of fourteen, at which period he is, as to the commission of crimes, supposed to have attained discretion, and his actions are subject to the same responsibility as the rest of society.

If a *woman* commit theft, burglary, or robbery, by the coercion of her husband, or even in his company, which presumes coercion, she is not guilty of these crimes; but such exceptions do not extend to treason, murder, or manslaughter. And in all misdemeanours, the wife may be found guilty with the husband.

Persons committing crimes by casualty or misfortune, by ignorance or mistake of fact, *not of law*, by compulsion or necessity, are not punishable; but each of these circumstances, ignorance, necessity, or infirmity, must be strictly and satisfactorily made out by the party who relies on them for justification.

Idiots and *lunatics* are not chargeable for their own acts, if committed when under these incapacities, not even for treason itself. But he who is guilty of a crime through voluntary drunkenness may be punished for it as much as if he were sober; and he who causes a madman to commit a crime is a principal offender, and as liable as if he had done it himself.

With respect to a *lunatic*, the 39 & 40 G. 3, c. 94, has provided for the different cases in which he may appear before a jury, both where it is in evidence that he was insane at the time of committing the act charged upon him, and where he shall appear so at the time of arraignment on trial. In the first case, the jury, instead of a general verdict of acquittal, are directed to find his insanity specially, and whether they acquit him on that ground. In the latter case, a jury shall be empannelled for the purpose of trying whether the prisoner be lunatic or otherwise at that time. If the verdict, in either case, establish the insanity, the prisoner must be kept in strict custody till the Queen's pleasure be known for the future disposal of him.

The 27 & 28 V. c. 29, refers to the treatment of *insane criminals*. If any person while imprisoned under sentence of punishment for any offence, or under charge of any offence, become insane, power is given to two justices to inquire with medical aid respecting such insanity. If certified by justices and such medical aid that prisoner is insane, secretary of state may grant warrant for removal of prisoner to a lunatic asylum. If secretary of state has reason to believe prisoner sentenced to death to be insane, he may desire medical aid to inquire into the same, and if after such inquiry the prisoner is pronounced to be insane, he may, by warrant of the secretary, be removed to a lunatic asylum. By s. 5, the charge and maintenance of insane prisoners is to be borne by the common fund of the union, and not by any single parish. The acts of 1853 and 1862 are defined by 28 & 29 V. c. 80, with reference to counties and towns which have courts of quarter sessions but no recorder, by explaining that county in the said acts shall be construed to include every county of a city or county of a town having quarter sessions and a clerk of the peace.

The criminal responsibility of persons suffering from insanity or monomania will be further elucidated by the following queries, submitted to the judges by the House of Lords, and to which the judges delivered their answers June 19, 1843. The first question for their consideration was as follows:—

"What is the law respecting alleged crimes committed by persons afflicted with insane *delusion in* respect of one or more par-

of the sane as to persons, as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit.

With respect to this question, the opinion of the judges was, that, notwithstanding the party committed a wrong act when labouring under the influence of redressing a supposed grievance or injury, or under the impression of obtaining some public or private benefit, he was liable to punishment.

Second question. "What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons is charged with the commission of a crime—murder, for example,—and insanity is set up as a defence?"

The judges, in answer to this question, wished to state, that they were of opinion the jury ought in all cases to be told, that every man should be considered of sane mind unless it was clearly proved to the contrary. That before a plea of insanity should be allowed, it must be clearly proved that the accused was under the influence of insane delusion at the time he committed the act he was charged with, and that he was conscious that the act was one he ought not to do. This opinion rested on the fact that every man was charged with an illegal act must be taken to know that it was illegal. Every person was supposed to know what the law was, and therefore nothing could justify a wrong act, except it was clearly proved the party did not know he was doing wrong. If that was not satisfactorily proved, the law presumed him responsible, and it was the duty of the judge to tell the jury which presumption the evidence, unexplained or unqualified by the circumstances of the case, appeared to raise.

With regard to the third question, viz.:—"In what terms ought the question to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?"—the judges did not wish to add.

The fourth question was—"If a person under an insane delusion as to existing facts commits an offence in consequence thereof, is he thereby excused?"

The answer to this question was, that the judges were unanimously of opinion that if the accused was only partial, the party accused was guilty of the offence, in a case of sane mind. If the accused knew that he was doing wrong, he would be entitled to an acquittal; but if under the influence of some supposed injury, he would then be liable to the punishment due by the laws to his crime.

With regard to the last question—"Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial

and examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to law; or whether he was labouring under any, and what delusion at the time?"—the judges were of opinion that the question could not be put to the witness in the precise form stated above, for by doing so they would be assuming that the facts had been proved. That was a question which ought to go to the jury exclusively. When the facts were proved and admitted, then the question, as one of science, could be generally put to a witness under the circumstances stated in the interrogatory.

By 30 & 31 V. c. 12, the law is amended in relation to *criminal lunatics*; and such persons, for the purposes of the act, are defined to be any person for whose safe custody during her pleasure H. M. is authorized to give order; 2. Any person whom a secretary of state is authorized by law to direct to be removed to a lunatic asylum under any act of parliament; 3. Any person sentenced or ordered to be kept in penal servitude who may be shown to the satisfaction of the secretary of state to be unfit from imbecility of mind for penal discipline. By s. 5, power is given to secretary of state to give conditional order of discharge. On expiration of the sentence power given to remove the criminal to a county asylum. The act does not apply to Scotland or Ireland.

VII. PRINCIPAL AND ACCESSORY.

All persons committing crimes are considered either *principals* or *accessories*.

A *principal* is either the actual perpetrator of the crime, or one who is present, or in the immediate vicinity, aiding and assisting the perpetrators.

An *accessory* is one guilty of an offence not principally, but by participation, as by advice, command, or concealment; and which may be either *before* or *after* the fact committed.

An accessory *before* the fact is one who, being absent at the time the crime is committed, procures or counsels another to commit a crime; and it is an offence greater than the accessory *after*: and therefore, in many cases, as in murder, robbery, and wilful burning, benefit of clergy was taken away from accessories *before*, and allowed *after* the fact.

An accessory *after* the fact is where a person, knowing a felony to have been committed, receives or assists the felon. And, generally, any assistance whatever given to a felon, to hinder his being apprehended, tried, or suffering punishment, makes the assister an accessory; as furnishing him with a horse to make his escape, or conveying instruments to break gaol, or to bribe the gaoler to let

him escape, makes an accessory to the felony. But this does not extend to a woman who receives or assists her husband, though a husband receiving his wife will be an accessory; and, in general, the nearest relations assisting each other after a felony is completed, makes them accessories.

In high treason and murder there are no accessories, but all are principals: so, also, in simple larceny, and all other crimes under the degree of felony.

By 24 & 25 V. c. 94, ss. 1–3, an accessory before the fact to any felony may be indicted and convicted as if he were a principal felon; accessories after the fact to felony may be tried either together with the principal felon, or after the conviction of such felon, or may be indicted and convicted of a substantive felony whether the principal felon shall or not have been convicted, or shall or not be amenable to justice. Abettors by aid or counsel in misdemeanours are liable as principals, s. 8.

VIII. PREVENTION OF CRIMES ACT, 1871.

In 1869 the Habitual Criminals Act (32 & 33 V. c. 99) was passed, to make further provision for the suppression of crimes committed by convicts at large on license, or by other offenders; but this statute was repealed in 1871 by 34 & 35 V. c. 112, which contains several provisions for the more effectual prevention of crime. By s. 3, any constable may, if authorised so to do in writing by the chief officer of police of the district, without warrant, take into custody any convict who is a holder of a license, if there are reasonable grounds for believing that the convict is getting his livelihood by dishonest means; and upon proof before a court of summary jurisdiction, his license is to be forfeited. A convict holding license must notify his residence to the chief officer of police of the district, and also any change of residence. Criminals are to be registered and photographed. Persons twice convicted on indictment may be specially punished, and subjected to police supervision. Fresh penalties are imposed on harbouring thieves and the like, and powers given to search for stolen property, and seize and secure property believed to be stolen.

Where proceedings are taken against any person for having received goods, knowing them to be stolen, or for having in his possession stolen property, evidence may be given that there was found in the possession of such person other property stolen within the preceding period of twelve months, and such evidence may be taken into consideration for the purpose of proving that such person knew the property which forms the subject of the proceedings taken against him to have been stolen.

Where proceedings are taken against any person for having received goods, knowing them to be stolen, or for having in his

possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen ; provided that not less than seven days' notice in writing shall have been given to the person accused that proof is intended to be given of such previous conviction ; and it shall not be necessary to charge in the indictment the previous conviction of the person so accused.

IX. INFANT LIFE PROTECTION ACT, 1872.

This important statute (35 & 36 V. c. 38) was passed for the purpose of making better provision for the protection of infants intrusted to persons to be nursed or maintained for hire or reward, but it does not extend to the relatives or guardians of an infant, nor to institutions established for the protection or care of infants, nor to any person receiving any infant for the purpose of nursing or maintaining it under the provisions of any poor relief act.

By s. 2, no person can receive for hire or reward more than one infant, and in case of twins more than two infants, under the age of one year for the purpose of nursing or maintaining such infants apart from their parents for a longer period than twenty-four hours, except in a house which has been registered as provided in the act. A register of names and houses is to be kept by the local authority, who may make by-laws regulating the number of infants to be received in each registered house ; and no fee is to be charged for registration, which registration is to be in force for one year. Every person receiving any infant in contravention to these provisions is guilty of an offence against the act (s. 3).

The local authority may refuse to register any house, unless they are satisfied that such house is suitable for the purposes for which it is to be registered, and unless they are satisfied by the production of certificates that the person applying to be registered is of good character, and able to maintain such infants (s. 4).

The forging of a certificate, or the falsification of the register, is an offence against the act. The local authority may strike a name and house off the register for neglect or other misconduct.

Every registered person is, within twenty-four hours after the death of any infant in the house, to give the coroner for the district notice, and an inquest is to be held, unless a certificate of a registered medical practitioner is produced to the coroner certifying that he attended or examined the infant, and specifying the cause of its death. A neglect to give notice as above is an offence against the act.

Every person guilty of an offence against the act is liable to imprisonment for not more than six months, with or without hard labour, or to a penalty not exceeding five pounds, as a court of summary jurisdiction may award, and in addition is liable to have his name and house struck off the register.

X. REMEDIES AGAINST THE HUNDRED.

The liability of the hundred for any loss or damage sustained within its boundaries, appears to have originated in the old common-law process of pursuing, with horn and with voice, all robbers and felons. Upon every robbery committed, the statute of Winchester, 13 E. 1, directs that suit shall be made from town to town, and from county to county, and that hue and cry shall be raised upon the felons, till they be delivered to the sheriff. And, that such hue and cry may more effectually be made, the hundred is bound to answer for all robberies therein committed, unless they take the felon. But this statute as well as others on the same subjects are repealed, and the old remedies against the hundred chiefly restricted to the recovering damages committed by riotous assemblies.

Under the 7 & 8 G. 4, c. 31, s. 2, in case of damage or demolition by riotous assemblies, the inhabitants of the hundred are liable to yield full compensation to the persons damnified, not only for the damage done, but also for any damage which may at the same time accrue to any fixture, furniture, or goods, in any church, chapel, house, or other building or erection. But to recover against the hundred, the action must be commenced within three calendar months, and the parties injured must go before a justice within *seven* days after the commission of the offence, and there state, upon oath, the names of the offenders, if known, and enter into recognizances to prosecute them when apprehended.

Such action cannot be instituted against the hundred where the damage sustained is to a *less* amount than £30; but in this case the party may be indemnified by a petty session, application having, in the first instance, been made in writing, within seven days after the commission of the offence, to the high constable of the hundred, and a notice of such application posted by the claimant on the church or chapel door of the parish where the injury has been sustained.

By 32 & 33 V. c. 47, ss. 5 & 7, in every action brought, or summary claim made, against any hundred of which there is no high constable, service is to be made upon the chief constable or other acting chief officer of police for the time being of the county in which the hundred is situated; and when part of any hundred is within the limits of any borough or place having separate police jurisdiction, such hundred is, for the purposes of the act, to

be deemed to be in the county in which the other part of such hundred is situate.

XI. CRIMINAL EXPENSES, REWARDS, AND COMPENSATIONS.

Formerly, the judges had only power to allow the expenses of prosecutors in cases of *felony;* while those who prosecuted for misdemeanours, in which they often sustained equal hardship, and conferred equal benefit on the community, had to bear their own charges. This inconsistency was removed by the 7 G. 4, c. 64. The act is amended by 14 & 15 V. c. 55, and expenses in cases of misdemeanour examined before a magistrate allowed. Payment of costs and expenses, and compensation for loss of time, may be allowed by the court in the cases of the following misdemeanours: namely, unlawfully and carnally knowing any girl above the age of ten years and under the age of twelve years; unlawfully taking or causing to be taken any unmarried girl, being under the age of sixteen years, out of the possession and against the will of her father or mother, or of any other person having the lawful care or charge of her; conspiring to charge any person with any felony, or to indict any person of any felony; conspiring to commit any felony. Payment of costs and compensation for trouble are to be made to the complainant and witnesses in cases of common assault in which the magistrates shall consider the matter a fit subject for indictment, and shall bind over the complainant and prosecutor to give evidence at the sessions. By s. 4, the power of the quarter sessions to make regulations as to the payment of costs and expenses of prosecutors and witnesses, and also to persons apprehending offenders, is taken away, and by ss. 5 & 6, the same is given to the secretary of state; the examining magistrates are to grant certificates in conformity to the regulations so made, but the certificate is not to be absolutely conclusive, as the compensation may be reduced. This act, however, is not to interfere with payments in respect of extraordinary courage, diligence, or exertion displayed in the apprehension of offenders; and the powers given to judges by the 7 G. 4, to order payments in respect of the apprehension of murderers and other criminals therein mentioned is extended to courts of sessions of the peace.

The power of examining magistrates in cases of felony and misdemeanours to grant certificates of expenses to witnesses, was extended by 29 & 30 V. c. 52, such certificates to be forwarded to the clerks of the peace to be laid before the court of quarter sessions, which may allow the whole or partial amount, and make orders for payment. And by s. 2 of 30 & 31 V. c. 35, on the acquittal of any indicted person who has not been committed or held to bail, the court, before which the indictment is tried, may order the prosecutor to pay costs to the accused, if it think the prosecution unreasonable.

By a legal anomaly, no action was maintainable against a person who, by wrongful act or negligence, caused death, though the offender was liable if the sufferer was only hurt; but this defect is supplied by Lord Campbell's Act, 9 & 10 V. c. 93, which provides, "that whensoever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect, or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, then, and in every such case, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to felony." The action to be for the benefit of the wife, husband, parent, or child of the person whose death has been so caused, and may be brought by the executor or administrator of the deceased. Only one action will lie, and must be commenced within twelve months after the death. The act extends to the United Kingdom, except Scotland, and was amended by 27 & 28 V. c. 95. The action was to be brought for the benefit of the wife, husband, parent, and child by the executor or administrator of the person deceased. But by reason of default or inability of any person to bring an action and to obtain probate of will, or of neglect so to do, no action could be brought nor compensation obtained by the parties interested therein. This deficiency is supplied by the act of 1864, providing that if no action is brought within six months by executor of person killed, such action may be brought by persons beneficially interested in result of the action. Damages may be paid into court in one sum by defendant, without regard to its division into shares.

XII. INTERNATIONAL CONVENTIONS ON OFFENDERS.

Conventions were concluded between France and the United States and England in the year 1843, for the mutual apprehension and extradition of persons guilty of specified offences, and these conventions have been legalized and effect given to them by 6 & 7 V. c. 75, and c. 76. In case of a French offender seeking refuge in this country, on requisition of the French ambassador, warrant may be issued for his apprehension; and any justice before whom he may be brought is authorised to commit him to gaol to be delivered up pursuant to such requisition. The secretary of state may then order the person committed to be delivered up to the person authorized to receive him. But no justice is to issue a warrant for the apprehension of any such offender unless the person applying is the bearer of a warrant, issued by a judge or other competent authority in France, authenticated in such a manner

justify the arrest of the supposed offender in France upon me charge.

ceedings are similar in respect of American offenders, but escription of offences is different: with France the conven- pplies to *murder*, *attempt to murder*, and *fraudulent bank- t*; but with the United States the convention does not e *fraudulent bankruptcy*, but in addition to murder, and pt to murder, includes *piracy*, *arson*, and *robbery*.

respects jurisdiction in regard to offences committed at sea ard American vessels, if at the time the vessels were three s from the English shore, the offenders must, under the dition Act (Washington Treaty, 10th article), be given up to merican authorities in London, the case being first heard at ow Street police-office.

25 & 26 V. c. 70, gives effect to a convention with Den- for the mutual surrender of criminals convicted of murder, empt to murder, forgery of bank-notes, of public securities, fraudulent bankruptcy. Surrenders to be made on the ition of an ambassador or on proof before a magistrate of fence charged.

se acts, however, have been superseded by 33 & 34 V. (the Extradition Act, 1870), which confers on her Majesty a ll power of making arrangements with foreign states, with t to the surrender to such state of any fugitive criminals ed with certain crimes, and provides that existing extradition ations should be carried out under the act. The crimes to the act applies are—murder and attempt and conspiracy rder; manslaughter; counterfeiting and altering money, and ng counterfeit or altered money; forgery, counterfeiting, ltering and uttering what is forged or counterfeited or altered; zlement and larceny; obtaining money or goods by false ces; crimes by bankrupts against bankruptcy law; fraud ailee, banker, agent, factor, trustee, or director, or member blic officer of any company made criminal by any act for the eing in force; rape; abduction; child-stealing; burglary and breaking; arson; robbery with violence; threats by letter, herwise, with intent to extort; piracy by law of nations; ig or destroying a vessel at sea, or attempting or conspiring so; assaults on board a ship on the high seas, with intent to y life or to do grievous bodily harm; revolt, or conspiracy to , by two or more persons on board on the high seas against thority of the master.

s act was amended and explained in 1873 by 36 & 37 V. By s. 3, accessories are made liable to be surrendered. 5, the secretary of state is empowered, by order under nd and seal, to require a magistrate to take evidence for the ses of any criminal matter pending in any foreign court or al. Any person can be compelled to give evidence in such a

case upon being tendered his expenses in the usual way, and also can be compelled to produce documents, and, if he gives false evidence, is considered to be guilty of perjury. Nothing in this section applies to a criminal matter of a political character. The following list of crimes is added to the list given in 34 & 35 V. c. 52. Kidnapping and false imprisonment, and also any indictable offence under the Larceny Act, 1861, or under 24 & 25 V. cc. 97, 98, 99, and 100, or any act amending or substituted for the same, and any indictable offence, under the bankruptcy laws for the time being in force, which is not included in 34 & 35 V. c. 52.

By 6 & 7 V. c. 34, offenders charged with any offence amounting to treason or felony, escaping from the colonies into the United Kingdom, or from the United Kingdom to any of our colonies, and against whom warrants have been issued, may be apprehended by the proper officers, after the warrant has been endorsed, in Great Britain by one of the secretaries of state, in Ireland by the chief secretary, and in the colonies by one of the judges of the superior law courts. But any person committed under this act, who shall not be sent by the readiest way to the place where the offence is alleged to have been committed, within two calendar months, may apply to the judge for his discharge, which is to be granted unless sufficient cause be shown for the contrary; and if not indicted within six months after his arrival in that part of her Majesty's dominions in which he is charged to have committed the offence, or if upon trial he is acquitted, he is, if he so desire, to be sent back to the place where he was apprehended, free of cost, and with as little delay as possible. By 16 & 17 V. c. 118, the last mentioned act (6 & 7 V. c. 34) is extended so as to apply to all felonies.

CHAPTER I.

Offences against Religion and Public Morals.

THE several offences, either directly or by consequence, injurious to society, and punishable by the laws of England, may be distributed under the following heads:—*First*, those which are more immediately hurtful to religion and public morals; *secondly*, such as violate the laws of nations; *thirdly*, such as especially affect the sovereign, or the order, security, and government of the State; *fourthly*, such as directly endanger the public interests and prosperity, as offences against public justice, trade, health, and police; and, *lastly*, those laws which derogate from the safety, rights, and enjoyments of individuals, and in the preservation and vindication of which the community is interested. The laws against apostacy, heresy, reviling the church ordinances, and Jesuits and

religious societies are now practically obsolete. This chapter will deal with offences against religion and morality.

I. SIMONY.

This offence, which is the sale of spiritual preferment, consists in the corrupt presentation to an ecclesiastical benefice for reward, gift, profit, or benefit. This is not an offence punishable, in a criminal way, at common law; but, by 31 Eliz. c. 6, it is provided, if any patron, for money, or other profitable consideration, or promise, present to any ecclesiastical benefice or dignity, both the giver and taker forfeit two years' value of the benefice or dignity; one moiety to the queen, and the other to the person who sues for the same. Corrupt elections and resignations in colleges, hospitals, and other eleemosynary corporations, are punishable with forfeiture of double the value, vacating the place or office, and the lapse of the right of election, for that turn, to the crown.

Though to purchase a *presentation*, the living being actually vacant, is undoubtedly simony, Lord Hardwicke held, that the *sale of an advowson*, during a vacancy, is not within the statute; and it has been decided, though with difference of opinion, that a bond to resign a school or freehold office, at the request of the patron, is valid. In the case of *Fletcher* v. *Lord Sondes*, on an appeal to the House of Lords, it was decided, after elaborate argument, that a bond entered into by a parson, to resign a living, in order that a particular person may, at a future period, be presented, is simoniacal and illegal. But the 9 Geo. 4, c. 94, renders valid engagements for the resignation of ecclesiastical preferments in favour of one of two persons to be specially named, being, either by blood or marriage, uncles, sons, grandsons, brothers, nephews, or grand-nephews of the patron (not being a mere trustee) or of the cestuis que trusts of the patron, or of any married woman whose husband shall be patron in her right. The bond must, however, be entered into before the presentatation (s. 1), and will not be valid unless one part thereof shall within two calendar months next after the date thereof be deposited in the registry of the diocese (s. 4). The resignation in pursuance of the bond will be void unless one of the persons named therein is presented within six calendar months after notice to the patron of the resignation.

II. DEFAMATION AND BRAWLING.

The 23 & 24 V. c. 32, abolishes the jurisdiction of Ecclesiastical Courts in England and Ireland, in suits against any person not in holy orders for defamation and brawling. After passing of the act (July 3, 1860), persons *in custody for* such offences to be dis-

writings, prints, pictures, drawings, or other representations are kept in any house, shop, room, or other place within the magisterial limits, for the purpose of sale or distribution, exhibition for gain, lending upon hire, or being otherwise published for gain; complainant also to state that one or more articles of such character have been sold, exhibited, or lent, so as to satisfy the magistrate that the belief of complainant is well founded, and that the publication of such obscenity would be a misdemeanour;—upon such depositions a special warrant may be issued to a police officer, with the necessary assistance, to enter in the daytime, and, if need be, use force, by breaking open doors or otherwise, to search for and seize such obscenities, and carry them before a magistrate, who may summon the occupier to appear within seven days to show cause why such articles should not be destroyed: occupier or owner of the articles not appearing, the obscenities may be destroyed, except those necessary for sustaining ulterior proceedings. If the articles seized are not of the character described by the complainant, they are to be restored to the occupier. Tender of amends to bar any wrong proceeding under the act, and notice of counter proceeding must be given in writing one calendar month previously. Appeal given to next general quarter sessions; appellant giving seven days' notice, and entering into recognizances to appear and prosecute the appeal.

IV. DRUNKENNESS, LEWDNESS, FEMALE PROSTITUTION.

Drunkenness is punishable by 21 Jac. 1, c. 7, with the penalty of *5s.*, or sitting six hours in the stocks, if unable to pay the penalty. Upon a second offence, the offender may be bound in a recognizance of £10, with two sureties for good behaviour, but conviction must, in all cases, be had in six weeks. By 24 & 25 V. c. 49, justices in Ireland are empowered to commit to local bridewells persons convicted of drunkenness.

Open and notorious Lewdness, either by frequenting houses of ill fame, which is an indictable offence, or by indecently exposing the person to public view, is punishable with fine and imprisonment.

Within the limits of the metropolis district, every person found DRUNK in any public thoroughfare, and guilty of *riotous* or *indecent* behaviour, may be fined any sum not above *40s.* for every offence, or if the magistrate think fit, instead of a pecuniary fine, may be committed to the house of correction for not exceeding seven days, 2 & 3 V. c. 47, s. 58.

Under 34 E. 3, c. 1, justices of the peace may hold to bail all that be not of *good fame*, and compel them to give sufficient surety for their good behaviour: which ancient statute has been revived in the metropolis for the purpose of bringing under magisterial notice the keepers of *notorious brothels*.

Every common PROSTITUTE or night walker, loitering or being in any thoroughfare or public place for the purpose of prostitution or solicitation, to the annoyance of the inhabitants or passengers, may be apprehended without warrant by the police of the metropolis within their jurisdiction, and is liable to a penalty of 40*s*., 2 & 3 V. c. 47, s. 54.

V. IMPOSTURE.

Pretending to exercise any kind of *witchcraft, sorcery, enchantment*, or *conjuration*, or undertaking to tell fortunes, or pretending from skill or any occult science to discover where *stolen* goods may be found, subjects to imprisonment for one year, and such further punishment by fine or imprisonment as the court thinks fit, 9 G. 2, c. 5, s. 4 ; 56 G. 3, c. 138, s. 2.

Practisers of the occult sciences are also punishable under 5 G. 4, c. 83 ; and persons pretending to tell fortunes, or using any subtle craft, means, or device, by palmistry, or otherwise, to deceive any of her Majesty's subjects, are punishable as rogues and vagabonds.

A similar species of offence is that of RELIGIOUS IMPOSTURE, by pretending to an extraordinary commission from heaven, thereby abusing and terrifying people with groundless apprehensions.

VI. VAGRANCY.

Offenders under this head form a numerous class in society, and are described by the Vagrant Act, the 5 G. 4, c. 83, under the denominations of idle and disorderly persons, rogues and vagabonds, and incorrigible rogues.

I. Who is deemed an *idle and disorderly person ?*

Every person being able, wholly or partly to maintain himself or family, by work or other means, and neglecting so to do, whereby they become chargeable to the parish ; every person returning to and becoming chargeable to any parish from whence he shall have been legally removed, unless he produce a certificate from the churchwarden and overseer, acknowledging him to be settled there ; every petty hawker or pedlar wandering abroad and trading without being licensed ; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner ; and lastly, every person wandering abroad, or placing himself in any public place, court, or passage, to beg, or causing any child so to do : all these are deemed IDLE AND DISORDERLY PERSONS, punishable for any term not exceeding a calendar month, by imprisonment in the house of correction.

II. Who is deemed a *rogue and vagabond ?*

Every person committing any of the offences mentioned in the ast paragraph a *second* time; every person pretending to palmistry r to tell fortunes; lodging in any outhouse or in the open air; not aving any visible means of subsistence, and not giving a good ccount of himself; exposing to view, in any street or public place, ny *obscene print, picture,* or *other* indecent exhibition; wilfully nd obscenely *exposing his person* in any street or public place, or n view thereof, with intent to insult any female; endeavouring, y the exposure of wounds and deformities, to obtain alms; going bout to collect alms or charitable contributions under a fraudulent retence; running away and leaving his wife or children chargeble to the parish; *playing* or *betting* in any street or other open nd public place, at or with any table or instrument of gaming, at ny game or pretended game of chance; having in his custody any ick-lock, or other implement, with *intent* feloniously to break nto house or building, or being armed with any gun or offensive reapon, with *intent* to commit any felonious act; found in or upon ny house or building, or in any enclosed yard, garden, or area, or any *unlawful* purpose; every *suspected* person or *reputed* thief requenting any river or navigable stream, dock, basin, wharf, uay, warehouse, or any street or way adjacent, with *intent* to ommit felony; and, lastly, every person apprehended as idle and lisorderly, and violently resisting such apprehension, and being ubsequently convicted of being idle and disorderly: all these are ROGUES AND VAGABONDS, and a justice of peace may commit such ffenders to the house of correction for any time not exceeding *hree calendar months.*

III. Who is deemed an *incorrigible rogue?*

Every person escaping out of confinement before the expiration f the time for which he has been committed under the Vagrant ct; or committing an offence which subjects him a *second* time o be committed as a rogue and vagabond; and, lastly, every person pprehended as a rogue and vagabond, violently resisting such pprehension, and being subsequently convicted of being a rogue nd vagabond: all these are deemed INCORRIGIBLE ROGUES; and nay be committed to the house of correction till the next general r quarter sessions of the peace, and then be further imprisoned or any period not exceeding one year, and, not being a female, hipped.

Any person may apprehend offenders under this act, and constables neglecting to do their duty, or persons hindering them rom doing their duty, forfeit £5.

By the Vagrant Act Amendment Act, 1873 (36 & 37 V. c. 38), hich is to be construed as one with 5 G. 4, c. 83, every person aming in any place to which the public have or are permitted to ave access with any table or instrument of gaming, or any coin, ard, token, or other article used as an instrument or means of aming at any game or pretended game of chance, is to be deemed

a rogue and vagabond within the meaning of 5 G. 4, c. 83, and may be convicted and punished under the provisions of that act, or in the discretion of the justices trying the case, by a penalty, for first offence, not exceeding 40*s.*, and for any subsequent offence not exceeding £5. This act came into operation on the 1st of October, 1873.

By 34 & 35 V. c. 108, s. 7, any pauper leaving any casual ward before he ought, or refusing to be moved to any workhouse or asylum under the provisions of the act, or leaving any such workhouse or asylum while he may be detained therein, or refusing or neglecting whilst an inmate of any casual ward, workhouse, or asylum to do the work or observe the regulations prescribed, or wilfully giving a false name or making a false statement for the purpose of obtaining relief, is to be deemed an idle and disorderly person within the meaning of 5 G. 4, c. 83; and every pauper committing any of the offences before mentioned, after having been previously convicted as an idle and disorderly person, or wilfully destroying or injuring his clothes, or damaging any of the property of the guardians, is to be deemed a rogue and a vagabond within the meaning of the same act.

VII. SUNDAY TRADING AND PROFANATION OF THE SABBATH.

By 1 Car. 1, c. 1, no persons shall assemble out of their parishes for any sport on Sunday, nor in their parishes use any bull or bear-baiting, interlude, play, or other unlawful exercise or pastime: penalty 3*s.* 4*d.* to the poor.

By 29 Car. 2, c. 7, no person, on pain of forfeiting 5*s.*, is allowed to *work* on the Lord's day (except works of necessity or charity), nor use any boat or barge, nor expose any goods to sale, except meat in public-houses, or milk or mackerel at certain hours. Milk may be sold before nine in the morning, and after four in the afternoon. Mackerel may be sold *before* and *after* divine service.

By 3 Car. 1, c. 1, any drover, carrier, or the like, travelling or coming to his inn or lodging on Sunday, forfeits 20*s.* A van travelling on Sunday between London and York is within the statute, *Middleton, ex parte*, 3 *B.* & *C.* 164; but a *stage-coach* travelling on the Lord's day is not illegal, *Sandeman* v. *Breach*, 7 *B.* & *C.* 96.

Fish carriages are allowed to travel on Sunday, either laden or returning empty. Persons publicly crying, or exposing to sale, herbs, forfeit them to the poor. Butchers killing or selling any victual, forfeit 6*s.* 8*d.*

No writ, process, or warrant, except in cases of treason, felony, or breach of the peace, shall be served on Sunday, on pain that the same shall be void, and the party serving the same be liable to an action for damages. All contracts made on Sunday are void;

ut a sale of goods made on Sunday, which is not made in the xercise of the *ordinary calling* of the vendor, is not void under he statute, 1 *Taunt.* 131. And the price of goods bought on unday has been held recoverable, the defendant having kept them, nd subsequently promised to pay for them, 6 *Bing.* 653.

By 1 & 2 W. 4, c. 32, s. 3, no person shall, on Sunday, or Christ- nas day, kill any game, or use any gun, dog, net, or engine, for hat purpose, on pain of forfeiting any sum not exceeding £5, ogether with the full costs of conviction.

The 21 G. 3, c. 49, was passed to restrain a practice very preva- ent at the time in London and Westminster: it enacts that if a ouse, room, or place be opened on Sunday for any public enter- ainment, or for debating upon any subject, to which persons are dmitted by *money* or *tickets*, the keepers of it shall forfeit £200 o any person who will prosecute; the manager or president £100, nd the receiver of the money or tickets, £50, and every person *rinting* an advertisement of such meeting forfeits £50.

By 34 & 35 V. c. 87, no prosecutions for offences under 29 Car. 2, . 7, are to be instituted, except with the consent, in writing, f the chief officer of police of the district, or of two justices of the eace, or a stipendiary magistrate having jurisdiction in the place here the offence was committed. No such prosecution can be eard before the magistrate by whom or with whose consent it has een instituted.

By 34 & 35 V. c. 19, Jews are exempted from penalties for work- ng in a workshop (as defined by the Workshops Regulation Act, 867) on Sunday.

CHAPTER II.

Offences against the Law of Nations. Duty of Neutrals.

THE law of nations, or international law, as it was first termed y Mr. Bentham, consists of a system of rules, deduced from usage nd the principles of natural justice, intended for the regulation f the mutual intercourse of nations in peace and war. Inter- ational law is founded, or intended so to be, on the principle that he different nations ought to do to each other in the time of peace s much good, and in time of war as little harm, as may be possible ithout injuring their own proper interests; and such law in its ntire extent comprehends the principles of national independence, he privileges of ambassadors, consuls, and inferior ministers; the ommerce of the subjects of each state with those of others; the ounds of just war and the mode of conducting it; the mutual nties of belligerents and neutrals in regard to search, blockade,

the treatment of prisoners, and other incidents pending hostilities; the rights of conquest; the force of an armistice, of safe-conducts and passports; the nature of alliances, and the obligations and construction of treaties.

The chief offences, however, of which the English laws take cognizance, and that fall within our notice, are limited to four kinds,—1. Violation of safe-conducts; 2. Infringement of the rights of ambassadors; 3. Piracy; and, 4. Acts tending to produce war.

As to the first, violations of *safe-conducts*, or *passports*, it was enacted by 31 H. 6, c. 4, that if any of the King's subjects molest, spoil, or rob any foreigner in amity, league, or truce, or under safe-conduct, the lord chancellor, with any of the justices of either the King's Bench or Common Pleas, may cause full restitution and amends to be made to the party injured. But this act is now repealed.

In consequence of the gradual increase of international commerce and intercourse, the use of passports in time of peace has been mostly discontinued by European States.

The *rights of ambassadors* are fully protected by the 7 Anne, c. 12, which enacts, that "an ambassador or other *public minister*, or his domestics, registered in the secretary of state's office, are not to be arrested; if they are, the process is void, and the persons suing out and executing it shall suffer such penalties and corporal punishment as the lord chancellor or either of the chief justices think fit." Neither can the goods of an ambassador or his servant be distrained, whether a foreigner or British subject, provided he is not a merchant or trader within the bankrupt laws.

A resident merchant, who acts as consul to a foreign prince, is not a *public minister* entitled to the privileges of an ambassador, 3 *M.* & *S.* 284.

The third offence against international law is PIRACY; which is a robbery on the high seas, and not in any creek or arm of the sea, such being within the jurisdiction of the adjoining country. The piracy must be on persons in amity with this country and without the authority of any state. Intent is an ingredient in this as in almost every other offence; for a person accused of piracy may show that he captured the vessel, or took the goods, thinking that they belonged to a state at war with England.

All acts of robbery and depredation on the high seas, which on land would have amounted to felony, are deemed piracies. Boarding a merchant-vessel, though without carrying her off, or seizing any of her goods; or the assisting, trading with, or combining with known pirates, are equally acts of piracy.

Piracy is punishable by 1 V. c. 88, which repeals or amends former statutes from Henry VIII. to George II. When murder is attempted, or any wound is inflicted dangerous to life, either at the time, before, or after the commission of the offence, the punish-

ıent is death ; but for simple piracy the punishment is mitigated ɔ transportation for life, or not less than fifteen years, or impri- ɔnment for three years.

Persons engaged or assisting in the African slave trade are guilty f piracy, subject to transportation (now penal servitude), or im- risonment, 5 G. 4, c. 113 ; 1 V. c. 91.

There are provisions for rewarding seamen who act bravely in ıpturing or resisting piratical vessels, and commanders who are ɔwardly are punishable by the forfeiture of their wages and six ıonths' imprisonment.

The 6 G. 4, c. 49, for encouraging the capture of piratical essels, provides that the officers, seamen, marines, and others ctually on board any King's ship at the taking or destroying any iratical vessels shall receive the sum of £20 for each pirate taken r killed during the attack, and the sum of £5 for every other ıan of the crew, not taken or killed, who shall have been alive on oard the pirate ship at the beginning of the engagement. But ıis act is amended by 13 & 14 V. c. 26, in respect of *rewards* for ıe capture of pirates, the courts of Admiralty being empowered to etermine whether the persons attacked or engaged as pirates *were irates ;* also the number of pirates and piratical vessels. Pro- erty found in possession of pirates belonging to British subjects is ɔ be restored on payment of one-eighth part of its value. Piracies re triable at the Central Criminal Court, or by commission in ıy county in England.

It will be convenient to mention here of what the territory of a ate consists, *i.e.* over what portion of the world the sovereign ıthority of a state has power. The territory of a state includes l that portion of *terra firma* lying within its boundaries, and lso all waters *wholly* contained within its limits, and the mouths f rivers, bays, and estuaries furnishing access to the land, and lso the coast sea for a marine league (about 3½ statute miles), ıough, according to the usage prevailing in Great Britain and the nited States, foreign goods cannot be shipped within four miles of ıe shore without the payment of duties. Vessels also have some f the attributes of territory, whether they belong to private tizens of a state, or are public ships belonging to the state itself. ı the latter case they are exempt from local jurisdiction, even in ɔreign ports, but in the former case they cease to be regarded as ırritory (unless otherwise provided by treaty) when in a foreign ort. Moreover, a private ship can be confiscated in a foreign port ır piracy, or for violation of the customs or laws of the foreign state, ıd it may be attached by the owner's creditor, and if a crime has ɛen committed in port, a vessel can be chased into the high seas ıd arrested.

These few remarks will help the reader to understand the proper titude to be assumed by neutrals towards belligerent states, hich it is our next object *to explain* so far as is possible where we

[illegible] with a subject in such an unsettled condition as [illegible]

[illegible] of a hostile state is liable to [illegible] but the property of private [illegible] may be taken to supply the wants of [illegible] persons, at a fair value. A ship [illegible] a belligerent power may, when in distress, run [illegible] and a defeated army may cross the frontier [illegible] but in this case [illegible] the duty of the neutral state to compel [illegible] arms. If the army refuse to do so, it seems that the enemy would be justified in pursuing it in order to prevent its taking the part of recommencing hostilities. Belligerent vessels may enter neutral ports in order to obtain provisions, but [illegible] may be taken on board at such time. A [illegible] may not send money, or supply troops, or open harbours [illegible] against a friendly state; nor can it allow [illegible] to arm any hostile expedition, or to build, [illegible] vessels of war to be used against a friendly state.

[illegible] by the Laws of his own [illegible] as a subject on the service of a state at war with a [illegible] with the war party, but the municipal institutes [illegible] of March, [illegible] in the House of Commons by Sir [illegible] Law, [illegible] the Russell's Notes—"I would [illegible] that were expressed some years [illegible] by Lord Lyndhurst, in [illegible] be given, and the legal doctrine be laid down in the [illegible] that any person who, by any single act [illegible] shall enlist or enlist or embark this country with any [illegible] with her Majesty, is guilty of misdemeanour. [illegible] terms by Lord Lyndhurst on [illegible] and was assented to by several other learned [illegible]

By the Foreign Enlistment Act, 1870 (33 & 34 V. c. 90), any [illegible] who, without the license of her Majesty, enlists in the service of any foreign state at war with any friendly state, or induces any other person to do so, or who leaves or goes on board [illegible] with the view of leaving her Majesty's dominions in order to enlist in such service, or who embarks persons under false representations or for the purpose of inducing such persons to enlist in such service, is guilty of an offence punishable by fine and imprisonment, with or without hard labour. The master or owner of any ship who takes illegally enlisted persons on board, is guilty of an offence punishable by fine and imprisonment, with or without hard labour, and the ship can be detained until the trial and conviction, or acquittal, of such master or owner, or until the penalties inflicted have been paid, or security for the payment given. A similar

penalty can be inflicted on any one who, without her Majesty's leave, builds or agrees to build any ship for the service of a foreign state at war with a friendly state, or who issues any commission for any ship to be employed against such friendly state, or, with like intent, equips or dispatches any ship, and the ship and her equipment are to be forfeited. The act regulates the proceeding in such cases and gives special power in certain cases to the secretary of state to detain ships and to grant search warrants, and also indemnifies against civil or criminal proceedings any officer acting under the act, and also the secretary of state or chief executive authority.

By 1 V. c. 29, the Queen may grant to any officer, not being a natural-born subject, but who, at the time of passing the act held the Queen's commission in any other regiment, and was allowed to retain the same, the rank of colonel, major-general, or general; and the Queen may also grant that aliens may enlist in her Majesty's service; but the number of foreigners serving together at any one time in any regiment not to exceed *one for every fifty* natural-born subjects; and no such soldier to be capable of holding any higher rank than that of *non-commissioned* officer.

Trade with a state at war with a friendly state in contraband of war, is excepted from the general principle of unrestricted trade between belligerents and neutrals. Contraband of war has been defined as including all warlike instruments, or materials by their own nature fit to be used in war. A neutral vessel, carrying contraband of war or transporting troops for the benefit of a belligerent, is subject to confiscation, if captured.

Another exception to the general freedom of neutral commerce is, when a port or coast-line is blockaded by the enemy.

The jurisprudence in respect to the *blockade of seaports* in time of war, forms among states a rather unsettled division of international law. In England, it has been always held that a blockade to be valid must be effective; that is, there must be a force of ships stationed off the port, or sufficiently near, to cause danger to a vessel attempting to enter. The Americans have followed in this course, and their highest legal authorities have laid down those international laws on a similar basis to that used by Lord Stowell. On the Continent they hold a different opinion, for the principle they laid down and acted upon during the war was that the ships should be stationed off the port, and sufficiently near to cause danger. There was only one word different between the two principles, but it was important—it was the substitution of the word "and" for "or." We contend that we may have a fleet cruising along a coast and blockading several ports, but the French interpretation was, that the vessels should be stationary off the port, and sufficiently near to cause danger. The French also thought that each ship attempting to run the blockade should be first

warned by the squadron that the port was blockaded, and then if she attempted to run it she might be seized.

We may here mention that discordant views have been current in respect of privateering: the European states being favourable to its abolition pending hostilities while the Americans were dissentient, from a politic regard to their long stretch of coast-line, and its numerous harbours of refuge.

As to Rebels.—A foreign state may assist a state to repress a rebellion, without having violated the laws of neutrality. A state at war with its own subjects seems, according to the better opinion, to be unable to close its ports to foreigners by the mere act of government, though it may establish a blockade, as if against a hostile state; but foreign ships who assist rebels by transporting to them arms, render themselves liable to seizure and confiscation, if taken within a marine league of the coast.

Lord Chelmsford stated, in a debate in the House of Lords on the 16th of May, 1861, on the President of the United States' proclamation at the outbreak of the civil war in America, that if any Englishman were to fit out a privateer for the purpose of assisting the Southern States against the United States, he would be guilty of piracy; but this, it is contended, would not apply to the crews of vessels engaged in carrying contraband of war; though, if captured within its limits, the state engaged in repressing rebellion might treat them as it would treat rebel subjects of its own.

Rebellion is a crime; and all persons voluntarily abetting it are criminals, whether subjects or foreigners. The fact that the sovereign, whose subjects the foreigners are, may have recognized the rebels as belligerents, can have no legal effect in the courts of the state engaged in subduing the rebellion.

The following five propositions are offered, in the eighth edition of Wheaton's International Law, p. 200, as suggestions of principles applicable to this subject, which seems to be in a very unsettled state:—

I. The courts of a state must treat rebellion against the state as a crime, and the persons engaged in it as criminals. If the acts are depredations on commerce protected by the state, they may be adjudged piracy, *jure gentium*, by the courts of the state. It is a political, not a leading question, whether the right so to treat them shall be exercised.

II. The fact that the state has actually treated its prisoners as prisoners of war, &c., or has claimed and exercised the powers and privileges of war as against neutrals, does not change the abstract rule of law. . . . .

. . . . . .

III. If a foreigner knowingly cruises against the commerce of a state under a rebel commission, he takes his chance of being treated as a rebel, *jure gentium*, or as a belligerent. In point of law, his foreign allegiance or citizenship is imma-

terial, as well as whether the sovereign whose subject he is, has recognized the rebel authorities as belligerents or not. It is not the custom for foreign states to interfere to protect their citizens voluntarily aiding a rebellion against a friendly state, if that state makes no discrimination against them.

IV. If a foreigner cruises under a rebel commission, he takes his chance of being treated as a pirate or belligerent by his own and all other nations, as well as by that he is cruising against. If his own country does not recognize the belligerency of the rebels, he is, by the law of his country, a pirate; if it does, he is not. In this respect each nation acts independently of others and for itself; and the courts of each nation are governed by the consideration whether their own political authorities have or have not recognized the belligerency.

V. Where a rebellion has attained such dimensions and organization as to be a state *de facto*, and its acts reach the dimensions of war *de facto*, and the parent state is obliged to exercise the powers of war to suppress it, and especially if against neutral interests, it is now the custom for the state to yield to the rebellion such belligerent privileges as policy and humanity require, and to treat captives as prisoners of war, &c. Yet this is a matter of internal state policy only, changeable at any time.

CHAPTER III.

Treason.

common law the nature and constituents of high treason s vague and undefined, and acts tending merely to diminish dignity of or respect towards the crown were held to be within cope; so that if a man became *popular* it was construed to be oaching on the prerogatives of the sovereign, and held to be son. But an end was put to constructive treason by the 25 , c. 2, in which those acts amounting to treason are distinctly ified. The provisions of this statute are confirmed and expanded 36 G. 3, c. 7, which last is made perpetual, as to sections , 6 (the rest is expired), by 57 G. 3, c. 6, s. 1. From these the law of treason may be thus stated:—

It is treason to *compass*, *imagine*, *invent*, *devise*, or *intend* h or destruction, or any bodily harm tending to death or ruction, or to maim, wound, imprison, or restrain the person e King, his heirs or successors; and to express, utter, or

declare of such compassing, inventions, devices, or intentions, or any or them. But such compassing, &c., must be manifested by some *overt act*, as by providing weapons, ammunition, or poison, or by sending letters to excite others to *join* in the enterprise. In the case of the regicides, the indictment charged that they did traitorously compass and imagine the death of the King. And the taking off his head was laid, among others, as an *overt* act of compassing.

Overt acts are evidence of intentions or designs in progress; and, according to Mr. Justice Foster, words may be, when uttered in contemplation of a traitorous purpose actually on foot and in prosecution. By the Criminal Law Commissioners an overt act is said to be "any act of conspiring or conferring, or consulting with, or advising, persuading, counselling, commanding, or inciting any person, or any other act, measures, or means whatsoever done, taken, used, or assented to, towards and for the purpose of effecting the traitorous intentions, or act charged."—*Fifth Criminal Law Report*.

2. To have *carnal knowledge* of the Queen consort, or the King's eldest daughter unmarried, or the wife of the King's eldest son and heir, is treason. In a criminal intercourse with the Queen, it is immaterial whether it be with or without force, but it is high treason in both parties if consenting.

3. To *levy war* against the King in his realm is treason, by statute of Edward III. as well as the common law. But, as in the first case of treason, there must be an *overt* act; a mere conspiracy to levy war is no overt act, unless war be actually waged; though, if a war be waged, then the conspirators are all traitors, although they are not in arms. Also this species of treason is incurred by *taking arms* not only to dethrone the Queen regent, but under pretence to reform religion, or the laws, or to remove evil counsellors, or other grievances, real or imaginary.

Upon the trial of Lord George Gordon, Lord Mansfield declared that it was the unanimous opinion of the court that an attempt by *intimidation* and *violence* to force the repeal of a law, was levying war against the King, and high treason, *Doug.* 570.

4. To *adhere to the King's enemies* within the realm, or give them aid in the realm, or elsewhere, is treason. This may likewise be proved by *overt* act, as by furnishing money, arms, ammunition, or provision, or sending intelligence to the King's enemies.

5. To *counterfeit* the great seal, privy seal, privy signet, or royal sign manual, is treason.

6. The last species of treason, ascertained by the 25 E. 3, is, if a man slay the chancellor, treasurer, or the King's justices of the one bench or the other, or justices of assize, and all other justices assigned to hear and determine, being in their places, such person is guilty of treason. This clause extends only to the *actual* killing

and only to the officers therein specified; so that the barons of the Exchequer, as such, are not included.

By 1 Anne, c. 17, to endeavour to deprive or hinder any person, being the next in succession to the crown, according to the limitation of the act of parliament, from succeeding to the crown, and attempt the same by any overt act, such offence is high treason. So, also, by 6 Anne, c. 7, if any person, by writing or printing, maintain and affirm that any other person has any right or title to the crown, otherwise than according to the act of settlement; or that the sovereign of this realm, with the authority of parliament, is not able to make laws and statutes to bind the crown and the succession, it is treason.

By 3 & 4 V. c. 52, being married to, or concerned in procuring the marriage of, any issue of her present Majesty, whilst such issue are under eighteen (in case the crown shall have descended to any such before that age), without the consent, in writing, of the regent, and the assent of both houses of parliament, is a capital treason. It is also a treasonable offence the knowing any person to have committed any of the preceding treasons, and receiving, relieving, comforting, or assisting him, or aiding his escape from custody.

An act of 1870, the 33 & 34 V. c. 23, abolishes forfeitures in treason and felony, but conviction of such is rendered a disqualification for certain offices under the crown, or ecclesiastical benefice. Persons aggrieved by a felony may, after conviction of the offender, be awarded any sum not exceeding £100, as a compensation for loss of property.

II. TRIAL AND PUNISHMENT OF TRAITORS.

Considering that, in prosecutions for high treason, the accused has the whole power and influence of the crown to contend against, with, perhaps, public feeling strongly excited against him, the law has humanely provided various helps and indulgences, which do not extend to other crimes and misdemeanours.

Thus, in case of high treason, or misprision of such treason, it is enacted, under 7 W. 3, c. 3, that no person shall be tried for such treason, except an attempt to assassinate the king, unless the indictment be found *within* three years after the offence has been committed.

By 7 Anne, c. 21, any person indicted for high treason, or misprision thereof, shall have not only a copy of the indictment, but a list of all the witnesses to be produced, and of the jurors empannelled, with their professions, and places of abode, delivered to him ten days before the trial, and in presence of two witnesses, the better to prepare him to make his challenges and defence. The *practice* is, to deliver a copy of the indictment, and the list of witnesses and jurors, ten clear days, exclusive of the day of deli-

very and the day of trial, and the intervening Sunday, previous to the trial.

All persons, too, accused of high treason are entitled to have two counsel allowed them by the court, and the same privilege is granted on impeachment by the House of Commons.

But these statutory indulgences have been withdrawn by a subsequent statute in cases of traitorous attempts directed against the *life* of the sovereign, and by the 39 & 40 G. 3, c. 93, it is provided that, in all cases of high treason, in which the overt act alleged in the indictment is any direct attempt on the life or person of the king, the accused, in that case, shall be indicted, arraigned, tried, and attainted, as if he were charged with *murder;* but upon conviction, judgment is to be given, and execution done, as in other cases of high treason.

The punishment for high treason, besides attainder, forfeiture, and corruption of blood, was formerly a barbarous exhibition. That in high treason, not relating to the coin, was, "that the offender be drawn to the place of execution, and be there hanged by the neck, and cut down alive, that his entrails be taken out and burned before his face, that his head be cut off, that his body be cut into four quarters, and that his head and quarters be at the king's disposal." But, by 33 & 34 V. s. 1, forfeiture, &c., for treason is abolished, and by s. 31, the punishment is now simply death.

By 1 V. c. 84, ss. 2, 3, forging the great seal, or the royal sign manual, the seals appointed to be used in Scotland, and the great and privy seals of Ireland, are treasons not punishable with death, but with transportation for life, or not less than seven years, or imprisonment not exceeding four nor less than two years.

III. PROTECTION OF HER MAJESTY'S PERSON.

Attempts on the life of the Queen, or to alarm her Majesty, often apparently from mere desire of notoriety, gave rise, in 1842, to the 5 & 6 V. c. 51, for the royal protection.

The act, without altering the statute relative to high treason, provides, that if any person shall wilfully discharge or attempt to *discharge, or point, aim, or present at or near to the person of the Queen*, any gun, pistol, or any other description of fire-arms, or other arms whatsoever, whether the same shall or shall not contain any explosive or destructive material, or shall discharge or cause to be discharged, or attempt to discharge or cause to be discharged, any explosive substance or material near to the person of the Queen; or if any person shall wilfully strike or strike at, or attempt to strike or to strike at, the person of the Queen, with *any offensive weapon*, or in any other manner whatsoever; or if any person shall wilfully throw or attempt to throw any substance, matter, or thing whatsoever at or upon the person of the Queen, with intent

in any of the cases aforesaid to injure the person of the Queen, or with intent in any of the cases aforesaid to break the public peace, or whereby the public peace may be endangered, or with intent in any of the cases aforesaid to alarm her Majesty; or if any person shall, near to the person of the Queen, wilfully produce, or have any gun, pistol, or any other description of fire-arms, or other arms whatsoever, or any explosive, destructive, or dangerous matter or thing whatsoever, with intent to use the same to injure the person of the Queen, or to alarm her Majesty,—every such person so offending shall be guilty of a high misdemeanour, and, being convicted, shall be liable, at the discretion of the court before which the offender has been tried, to be transported beyond the seas for the term of seven years, or to be imprisoned, with or without hard labour, for any period not exceeding three years, and during the period of such imprisonment to be publicly or privately whipped, as often and in such manner and form as the court shall direct, not exceeding thrice.

IV. CROWN AND GOVERNMENT SECURITY ACT.

Doubts having arisen in 1848, on the part of the government, whether the unrepealed enactments of the 36 G. 3, c. 7, and their continuation by 57 G. 3, c. 6, extended to Ireland, they were removed by the direct extension of them to that kingdom under the 11 V. c. 12. By the 11 V. certain treasons already mentioned, which had been heretofore capital and punishable by death, were mitigated to felonies, and subjected to transportation or imprisonment. Accordingly, by the third section, it is provided that—

"If any person whatsoever after the passing of this act shall, within the United Kingdom or without, compass, imagine, invent, devise or intend to deprive or depose our most gracious lady the Queen, her heirs or successors, from the style, honour, or royal name of the Imperial Crown of the United Kingdom, or of any other of her Majesty's dominions and countries, or to levy war against her Majesty, her heirs, or successors, within any part of the United Kingdom, in order by force or constraint to compel her or them to change her or their measures or counsels, or in order to put force against, or constraint upon, or in order to intimidate or overawe both houses, or either house, of parliament, or to move or stir any foreigner or stranger with force to invade the United Kingdom, or any other of her Majesty's dominions and countries under the obeisance of her Majesty, her heirs and successors, and such compassings, imaginations, inventions, devices, or intentions, or any of them, shall express, utter, or declare, by publishing any printing or writing, or by *open and advised speaking*, or by any covert act or deed, every person so offending shall be guilty of FELONY, and, being convicted thereof, shall be liable at the discretion of the court to be transported *beyond the* seas for the term of his or her

natural life, or for any term not less than seven years, or to be imprisoned for any term not exceeding two years, with or without hard labour, as the court shall direct."

The insertion of the words "open and advised speaking" have been complained of as establishing a novelty in treasonable offences; but, as Mr. Wise has remarked (*Law on Riots*, 100), on Mr. Justice Foster's opinion, and other legal authorities, words already constituted an overt act of treason if tending to forward or extend traitorous designs. Against a too stringent enforcement of the clause on "open and advised speaking," the fourth clause enacts that the information for such offence must be on oath to one or more magistrates, or the sheriff or deputy in Scotland, within six days after utterance; and the warrant be issued within ten days after the information, and within two years after the passing of the act. Conviction not to ensue unless on the confession of the accused in open court, or unless the alleged words spoken be proved by two credible witnesses.

Doubts having arisen in 1849, on the conviction of Smith O'Brien and others, as to the power of the crown to *mitigate* the punishment of offenders under judgment of death for treason in Ireland, they were removed by the 12 & 13 V.c. 27, empowering the crown to order the transportation of any offender under judgment of death to whom mercy had been extended.

CHAPTER IV.

Coin and Public Offices.

I. OFFENCES AGAINST THE COIN.

In 1861, the laws of the United Kingdom relative to coinage offences were consolidated and amended by 24 & 25 V. c. 99, and for the purposes of this act "the Queen's current *gold or silver coin*" interpreted to include any coin lawfully current in any part of the realm; and the "Queen's copper coin" to include any copper or bronze coin, or mixed metal, lawfully current; "false or counterfeit coin" to include any of the current coin which has been gilt, silvered, washed, coloured, or cased over, or in any manner altered, so as to resemble any coin of a higher denomination. Having any matter in possession explained, where any one not only by himself in possession, but also the knowingly and wilfully having it in the actual possession of any other person, in any house or building, lodging, or other place, open or inclosed, whether belonging to or occupied by himself or not, and whether such matter be so had for his own benefit or for that of any other person, s. 1.

By s. 2, to counterfeit the gold or silver coin is felony, punishable, at the discretion of the court, by penal servitude for life or not less than three years, or imprisonment for not exceeding two years, with or without hard labour, or solitary confinement. Subject to the same punishment is the colouring counterfeit coin or any pieces of metal with intent to make them pass for gold or silver coin; or colouring or altering genuine coin with intent to make it pass for higher coin, ss. 2, 3.

By s. 3, to impair, diminish, or lighten the gold or silver coin, with intent that such coin may pass current, is felony, punishable by penal servitude for not exceeding fourteen and not less than three years, or imprisonment for not exceeding two years, with or without hard labour or solitary confinement.

The unlawful possession of filings, or clippings, of gold or silver coin, punishable by penal servitude for not exceeding seven nor less than three years, or imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement, s. 5.

Without lawful excuse to buy, sell, receive, pay, or put off, or offer to do so, any counterfeit coin at or for a lower value than the same imports, or was apparently intended to import, is felony, punishable by penal servitude for life or not less than three years, or imprisonment for not exceeding two years, with or without hard labour or solitary confinement. Same punishment for importing counterfeit coin from beyond seas, ss. 6, 9. Exporting counterfeit coin is a misdemeanour, punishable by imprisonment for not exceeding two years, with or without hard labour, and with or without solitary confinement, ss. 6–8.

By s. 9, to tender, utter, or put off any counterfeit coin, knowing the same to be counterfeit, is a misdemeanour, punishable by imprisonment for a year, with or without hard labour or solitary confinement. Uttering, accompanied by possession of other counterfeit coin, or followed by a second uttering within ten days, punishable by imprisonment for not above two years, with or without hard labour or solitary confinement, ss. 9, 10.

Having three or more pieces of counterfeit gold or silver coin in possession, with intent to utter, penal servitude for three years, or imprisonment for two years. A second offence felony, ss. 11, 12.

To tender or utter as the current gold or silver coin, any *foreign coin or medals*, with intent to defraud, imprisonment for one year, with or without hard labour or solitude, s. 13.

To make or counterfeit the *copper coin* of the United Kingdom is felony, subject to penal servitude for seven years or under, or imprisonment for two years, with or without hard labour or solitude. To tender or utter such base coin, subject to imprisonment with or without hard labour or solitude, ss. 14, 15.

To *deface*, by stamping any name or words on the current gold, silver, or copper coin, imprisonment for one year, with or without hard labour. The tender of *such* defaced coin, is not a legal tender,

and subjects to a penalty of 40*s.* on leave of the crown officer to prosecute, s. 17.

To make or counterfeit *foreign* gold or silver coin, penal servitude for not above seven nor less than three years, or imprisonment not above two years, with or without hard labour or solitude. A like punishment for bringing such counterfeit foreign coin into the kingdom. To tender or utter such foreign coin, imprisonment not above six months, with or without hard labour. A second offence, two years' imprisonment, and a third offence felony, ss. 18, 21.

To counterfeit *foreign coin*, other than gold or silver, imprisonment for one year; for a second offence, penal servitude for seven to three years, or imprisonment for two years with hard labour or solitude, s. 22.

Having in possession, without lawful excuse, above five pieces of base *foreign* gold or silver coin, subjects the same to be destroyed by order of a justice; and the possessor to a penalty of from 10*s.* to 40*s.* for every piece; or, if penalty be not paid, imprisonment for three months in Bridewell.

Making, mending, or having in possession, any *coining tools* is felony, liable to penal servitude for life or lesser term.

Conveying tools or moneys out of the Mint without lawful authority or excuse is felony, s. 25.

Coin suspected to be diminished or counterfeit may be cut, broken, or bent by any person to whom it is tendered, and the person who offers it to bear the loss; but if found to be of due weight and lawful coin, the person to whom it is offered is liable to receive it at the coinage rate, s. 26.

Any person, by s. 31, may apprehend any person committing any indictable offence, and deliver the offender to a constable. The remaining sections of the act refer to the discovery and seizure of counterfeit coin or tools, to evidence and procedure in England, Scotland, and Ireland. The words "Queen's coin" include all coin lawfully current; and wilfully having coining implements in any house, room, or other place is deemed a having in possession contrary to 24 & 25 V. c. 99. It is a misdemeanour to counterfeit the coin of a foreign state, or have implements for the purpose, though the coin is not current in the United Kingdom; and two foreigners were recently sentenced to imprisonment for an *attempt* only, by providing implements to counterfeit the Turkish piastre. (*Central Criminal Court, Nov.* 25, 1858.)

The Coinage Act, 1870 (32 & 33 V. c. 10), consolidates and amends the law relating to the coinage and to the mint. A tender of payment of money, if made in properly issued coin of not less than the least current weight as stated in the 1st schedule to the act, is a legal tender, in the case of gold coins for a payment of any amount, in the case of silver coins for a payment of an amount not exceeding forty shillings, but for no greater amount, in the case

of bronze coins for an amount not exceeding one shilling, but for no greater amount. No piece of gold, silver, copper, or bronze, or of any metal or mixed metal of any value may be issued, except by the Mint, as a coin or token for money, under a penalty of £20. The act deals with defacing light coin, coining of bullion at the Mint, purchase of bullion by the master of the Mint, regulations by proclamation of the Queen in council, &c., and also deals with the custody of the standard trial plates and weights.

II. DESTROYING PUBLIC SHIPS OR EMBEZZLING PUBLIC STORES.

By 12 G. 3, c. 24, it was a capital offence to set on fire or destroy any of her Majesty's ships of war, or destroy the Queen's arsenals, magazines, dockyards, ropeyards, victualling offices, or materials appertaining thereto; or military, naval, or victualling stores; or to procure, abet, or assist in such offences.

By the Naval Stores Act, 1869 (32 & 33 V. c. 12), the Naval Stores Act, 1867, is repealed. Certain marks are appropriated to denote her Majesty's property in stores. Any person obliterating such marks, is guilty of a felony, and liable to penal servitude for five years, or imprisonment for two years. The metropolitan police are given power to stop and search suspected persons. No person is allowed, without express authority, to sweep or search for stores or dredge in the sea within one hundred yards of any one of her Majesty's vessels, or of any dockyard or moorings, under a penalty not to exceed £5, or imprisonment for any term not exceeding three months, with or without hard labour.

If stores are found in the possession of any one in her Majesty's service, or in the service of the Admiralty, or of any one being a dealer in marine stores, or in old metals, or of a pawnbroker, such person is liable, unless he account satisfactorily for the possession of the stores, to a penalty not exceeding £5, and for this purpose stores are deemed to be in the possession of any one if he knowingly has them in the actual possession of any other person, or in any house, building, &c., whether occupied by himself or not, or whether such stores are or not for his own benefit.

III. SALE OF PUBLIC OFFICES.

The buying or selling of offices of a public nature has been considered as an offence *malum in se*, and indictable at common law, 1 *Russ.* 227.

By 5 & 6 E. 6, c. 16, if any person bargain to sell any office or any part thereof, to receive *money* or *other profit*, which office concerns the administration of justice, or the king's revenue or fortresses, or any clerkship in any court of record, he shall lose all

right of nomination to such office; and the person offering such money or profit shall be disqualified for the office.

The provisions of this statute have been extended to Scotland and Ireland, and to all offices in the *gift of the Crown*, and to the principal offices of any department of the government in the United Kingdom and colonies, 49 G. 3, c. 126.

Bargaining, selling, or being in any manner connected in the negotiation of such offices for gain, renders the parties guilty of misdemeanour, subjecting them to fine and imprisonment, ss. 3, 4. Opening or keeping any office for the brokerage of places is a misdemeanour, s. 5. If any person *advertise* or *publish* any office as set up for these purposes; or advertise or print the name of any agent or broker for the same, or any proposal relative thereto, he shall forfeit £50, with full costs, ss. 5, 6.

The act did not extend to the sale of commissions in the army for prices fixed by the Queen's regulations. But to receive or pay, or agree so to do, a higher sum than the regulated price for the sale or exchange of a military commission, rendered the parties guilty of misdemeanour, and forfeited the commission, which might be sold, and half the regulated value (not exceeding £500) given to the informer, and the other half applied as the Queen should direct.

CHAPTER V.

Misprision and Contempt.

ANOTHER class of offences, directed more immediately against the government and course of justice, is entitled Misprision and Contempt, and includes those offences which are next under the degree of treason or felony.

Misprision of treason consists in the bare knowledge or concealment of treason, without any degree of assent thereto; if there be any semblance of participation therein, the offence is much more serious; as if a person goes to a treasonable meeting, knowing beforehand that a conspiracy is intended against the Queen: or being in such company once by accident, and having heard such treasonable conspiracy, meets the same company again and hears more of it, but conceals it; this is an implied assent in law, and makes the concealer guilty of actual high treason.

By 1 & 2 Phil. and Mary, c. 10, to keep secret any treason committed or intended to be committed, is punishable with loss of profits of lands during life, forfeiture of goods, and imprisonment for life.

Misprision of felony is the concealment of a felony, which a man knows but never assented to; for if he assented, this makes him either principal or accessory.

Concealing of treasure trove, which belongs to the Queen or her grantees, is also a misprision, which was formerly punishable with death; but this, as well as the two preceding cases of misprision, are now punishable only by fine and imprisonment.

Contempts are such positive misprisions as consist in the commission of something which ought not to be done; among which the first and principal is *the maladministration of public officers*, by the embezzlement of the public money or otherwise. This is usually punished by parliamentary impeachment; and, although not a capital offence, subjects the delinquent to fine, imprisonment, exile, or perpetual disability for public office.

For the better punishment of malversation in office *abroad*, it is provided by 42 G. 3, c. 85, that all offences committed by any person employed abroad in the public service, in any station, civil or military, may be prosecuted in the court of Queen's Bench in England; and, besides the punishment which the party would have suffered for the same crime in England, he is made liable, at the discretion of the court, to be adjudged incapable of ever serving her Majesty again.

To accept a pension from a foreign prince, without the consent of the crown, is a contempt of the Queen's government. So it is to drink to the *pious memory* of a traitor, or for a clergyman to absolve persons at the gallows who persist in the treasons for which they suffer. To give out scandalous stories concerning the Queen, or falsely assert that she labours under the affliction of mental derangement, is criminal, and an indictable offence.

Threatening or reproachful words used to a judge sitting in the courts are a high contempt, punishable with fine, imprisonment, and corporal infliction. A judge sitting at the *Nisi Prius* has the power of fining even a defendant conducting his own defence to a criminal charge for contempt of the court, in uttering offensive matter in the course of that defence, 4 *B.* & *A.* 329.

If a man assault or threaten his adversary for suing him, a counsellor or attorney for being employed against him, a juror for his verdict, or a gaoler or other ministerial officer for keeping him in custody, he is liable to fine and imprisonment.

To endeavour to dissuade a witness from giving evidence, to disclose an examination before the privy council, or to advise a prisoner to stand mute, are all impediments of justice, and high contempts of the Queen's courts, punishable with fine and imprisonment. It is also a high misprision, subject to fine and imprisonment, for a grand juror to disclose to a person indicted the evidence that appeared against him.

The power of courts of equity in cases of contempt is regulated by 1 W. 4, c. 36; and the poor and ignorant are no longer subject

to indefinite imprisonment, neither can the merely obstinate so readily impede the course of justice. Under this act, where a party neglects from any cause to do what is required of him, the court is empowered to act for, and then *compulsorily* to discharge him. Imprisonment can only be used to gain an end, and that end gained, it will cease. Whenever a party omits to apply for his discharge, the court may release him, and pay the costs of the contempt out of any funds belonging to him over which it has power; or make them costs in the cause against him; or discharge him from contempt, and leave him debtor for the costs, which may afterwards be cleared under the Bankrupt Act.

By 23 & 24 V. c. 149, the Queen's prisons are to be visited quarterly, for the purpose of examining any persons who are imprisoned for contempt by the court of Chancery, and gaolers are to make reports of all such prisoners to the Lord Chancellor.

CHAPTER VI.

Unlawful Societies, Oaths, and Sedition.

THESE form the last class of offences directed against the government which it will be necessary to notice, and which for the most part were unknown to our ancestors, having been chiefly made the subject of criminal jurisprudence by modern acts of parliament. The statutes and parts of statutes relative to the description of offences included in this chapter, which have expired or been repealed, we shall pass over, and only notice such provisions as remain in force.

I. POLITICAL SOCIETIES AND ASSOCIATIONS.

The 39 G. 3, c. 79, was directed against certain associations, called societies of *United Englishmen*, *United Scotsmen*, *United Irishmen*, and *The London Corresponding Society*, and provides that every political society shall be deemed an unlawful combination and conspiracy, if any member thereof take any *oath* or *test* contrary to 37 G. 3, c. 123, or subscribe any declaration or engagement not required by law; if the *name* of any member be kept *secret*, or there be any committee, or select body, or any president, treasurer, delegate, secretary, or other officer, not known to the society at large; if the names of the committee, select body, and officers be not entered in regular books, *open* to the inspection of all the members; if the society be composed of divisions, parts, or branches, acting separately, and having distinct officers, or delegates elected to act for each part or branch: all societies so con-

stituted and conducted are declared unlawful, and every member thereof and every person who shall correspond therewith, or by contributions of money or *otherwise* aid or abet the same, is subject, on conviction, either by information before one justice, to a fine of £20 or three months' imprisonment, or by indictment, to transportation for seven years. Exceptions in favour of societies for religious and charitable purposes, and Freemasons' lodges.

This statute clearly refers to societies having *oaths*, *tests*, or any kind of *secret* proceedings, or having branches of divisions; but does not refer to separate and independent societies, nor prohibit the appointment of delegates, or the correspondence of such insulated associations.

But the provisions of the 39 G. 3 are extended by the 57 G. 3, c. 19, enacting that every society or club that shall elect or employ any *committee*, *delegate*, *representative*, or *missionary*, to meet, confer, or communicate with any other *society* or *club*, or with any committee, delegate, representative, or missionary of such other club or society, or induce any person to become a member thereof, shall be subject to the penalties of 39 G. 3, namely, fine, imprisonment, or transportation. Being a member of such society, or corresponding therewith, or supporting it by money or otherwise, subjects to the like penalties and punishments. Persons licensed for the sale of ale, beer, wines, or spirits, suffering such unlawful societies to meet in their houses, liable to forfeit their licenses; and any other person suffering such societies to meet in his house or apartment, is subject for the *first* offence to a penalty of £5, and for every subsequent offence is liable to the penalties and punishments of the 39 G. 3, c. 79.

These severe restrictive laws do not prohibit persons from being members of political societies, provided they are unconnected with others, and not of the descriptions mentioned; but it may be doubted whether *sending instructions*, or delegates from a society already formed, to an incipient meeting or association of persons, would not be deemed a violation of the 57 G. 3; it would certainly contravene its *spirit*, but whether it violated the letter would depend on the point—whether an appointed meeting of persons, not organized, could be considered a "*society*" or "*club*" within the meaning of the act.

In the session of 1846, an attempt was made to procure a repeal or mitigation of the laws against political societies, but unsuccessfully. All the concessions obtained by 9 & 10 V. c. 33, are that the statutes shall not be enforced at the instance of common informers or other persons. All prosecutions under them must be commenced in the name of the law officers of the crown.

II. UNLAWFUL OATHS AND ENGAGEMENTS.

By 37 G. 3, c. 123, any person who administers, or assists, or is present in the administering of any oath or engagement intended to bind persons in any *mutinous* or *seditious* purpose, or to disturb the public peace, or to be of any society formed for such purpose; or to obey the orders of any *leader*, *committee*, or *body of men* not lawfully constituted; or not to inform against any confederate, associate, or other person; or not to *reveal any unlawful combination* or confederacy, or illegal act done or intended, or illegal oath or engagement taken or tendered, shall, on conviction, be adjudged guilty of felony, and be transported for not exceeding *seven years*. Persons taking such illegal oath, without being compelled, subject to a like punishment.

Administering any oath to bind persons to commit treason, murder, or felony, or aiding therein, is punishable with transportation for life, or fifteen years, or imprisonment for three years; and persons taking such oath without compulsion are punishable with transportation for life, or for such term of years as the court shall adjudge, 52 G. 3, c. 104; 1 V. c. 91.

Compulsion will not excuse any person taking such unlawful oath, unless within fourteen days (if not prevented by actual force or sickness, and then within fourteen days after the hindrance ceases) he discovers the same to a justice of peace, or secretary of state, 37 G. 3, as amended by 52 G. 3, c. 104, s. 5.

In the case of *The King* v. *Marks*, 3 East, 157, a question was raised whether the unlawful administering of oath by an associated body of men to a person, purporting to bind him not to reveal or discover an unlawful combination or conspiracy of persons, nor any illegal act done by them, was within the 37 G. 3; the object of the association being a conspiracy to *raise wages* and make regulations in a certain trade, and not to stir up *mutiny* or *sedition*. The oath was, "You shall be true to every journeyman shearman, and not to hurt any of them; and you shall not divulge any of their secrets—So help you God." No positive decision was come to by the judges in this case, but the impression of the judges seemed to be that the offence was within the statute.

A subsequent case occurred at the Dorchester assizes, March 17, 1834, when six agricultural labourers were convicted and sentenced to seven years' transportation for being members of an illegal society, and administering illegal oaths. The indictment charged them with administering an oath not to reveal an unlawful combination. The combination was illegal under 39 G. 3, as formed to administer unlawful oaths; and the oath not to reveal such combination illegal under 37 G. 3: so, by a rather subtle application of both statutes by Mr. Justice Williams, the offenders were convicted.

III. SPENCEAN OR ANTI-PROPERTY SOCIETIES.

Under the 57 G. 3, c. 19, Spencean societies or clubs, or any ıer description of society, by whatever name known or called, ring for their object the confiscation or division of the land, or extinction of the *funded property* of the kingdom, are pro-ıited as unlawful combinations and confederacies; and persons onging to them are liable to fine or imprisonment by informa-n, or to transportation for seven years on prosecution by indict-nt. The 57 G. 3, c. 19, extends only to Great Britain, the r on illegal societies in Ireland being the 4 G. 4, c. 87.

IV. SEDUCTION OF THE MILITARY AND NAVAL FORCES.

The 57 G. 3, c. 7, makes perpetual the 37 G. 3, c. 70, for Great itain, and 37 G. 3, c. 1, for Ireland, by which the attempt to luce any person serving in her Majesty's land or sea forces from duty and allegiance, or to incite any one to commit any act of ıtiny, is punishable with *death;* but the capital punishment is tigated by 1 V. c. 91, to transportation for life, or for fifteen ırs, or imprisonment for three years. Whoever administers any *lawful* oath, or takes any oath or engagement intended to bind y sailor or soldier in any mutinous or seditious society, or to ey any committee, or any person not having legal authority, is ilty of *felony*, and may be punished with penal servitude.

V. TRAINING TO ARMS AND MILITARY EXERCISES.

The 60 G. 3, c. 1, extends to Great Britain and Ireland, and enacts ıt meetings and assemblies of persons for the purpose of being *ined to the use of arms*, or of practising military exercises and ılutions, without the authority of the Queen, a lord lieutenant, two justices of the peace, shall subject the offenders to trans-tation for not exceeding seven years, or imprisonment not ex-ding two years; the persons attending such meetings are liable fine and imprisonment not exceeding two years. Any magistrate, ıstable, or peace officer may disperse meetings assembled for ch unlawful purposes, or detain and require bail from any one ending them.

VI. SEDITIOUS MEETINGS AND ASSEMBLIES.

Sedition is a term of frequent occurrence, but Blackstone and st popular writers on law have passed it over without defining precise application. It seems to consist in attempts made by

individuals or public meetings, by speeches or writings, to instigate to a violation of the law, to disturb established institutions, or the peace and order of society. The uttering words and political writings which intemporately or indecently criticize the public measures of the Queen and her ministers, by imputing to them corrupt and improper motives, are seditious: for though temperate observations on such measures are allowable, yet the attempting to possess people with an ill opinion of the government, and disparage it in public estimation, is considered a serious offence, whether the expedient resorted to be obloquy or ridicule.

The punishment of sedition is fine and imprisonment proportioned to the magnitude of the crime and the circumstance accompanying it.

A public meeting would be deemed *seditious and unlawful* which assembled under such circumstances of *terror*, arising either from excessive numbers, the alarming manner of assembling, or the violence of the language employed against the established authorities, as endangered the public peace, or tended to excite fears and jealousies in the people. The justices, in such cases, would be warranted in swearing in constables, and adopting the precautions to prevent disturbance prescribed by 1 & 2 W. 4, c. 41. The general rule of law in regard to public meetings is, that numbers constitute force—force, terror—terror, illegality.

A meeting called "to adopt preparatory measures for holding a national convention" is an illegal meeting, *Rex* v. *Furzey*, 6 *C.* & *P.* 81.

Some kinds of sedition may be of so aggravated a kind as to verge on treason, and come within the scope of 25 E. 3, as a *levying of war*, and an attempt by intimidation and violence to alter established institutions and remove grievances.

By 57 G. 3, c. 19, s. 23, it is unlawful to convene any meeting of exceeding *fifty* persons in any street, square, or open place in Westminster or Middlesex, within one mile from the gate of Westminster Hall (except in St. Paul's, Covent Garden, and parish meetings in St. John's and St. Margaret's), for the purpose of petitioning the Queen or either house of parliament for alterations in matters of church and state, on any day in which parliament is sitting, or when any of the judges sit in the courts of Westminster Hall.—See *Libel*, *Conspiracy*, and *Riot*.

CHAPTER VII.

Offences against Public Justice.

Of the offences under this head, some are felonious, others are only misdemeanours. We shall begin with the minor delinquencies.

I. RESCUES AND ESCAPES.

Rescue is forcibly and knowingly freeing another from an arrest
: imprisonment, and generally renders the rescuer an accomplice
ı the crime. Thus, a rescue in treason, is treason; in felony, is
lony; and in misdemeanour, a misdemeanour. To rescue, or
:tempt to rescue, any person committed for murder, or on his way
› execution, was punishable with death; but the punishment is
ıitigated, by 1 V. c. 91, to penal servitude for life, or ten years,
: imprisonment for two years.

By 26 G. 2, c. 31, to convey to any prisoner in custody for
eason or felony, any arms, disguise, or instrument; or in any
ay to assist his escape, without the knowledge of the gaoler,
ıough no escape be attempted, subjects the offender to transporta-
on for seven years; or, if the prisoner be in custody for an in-
ırior offence, or charged with a debt of £100, it is then a
ıisdemeanour, punishable with fine and imprisonment.

This act does not extend to cases where an actual escape is made,
ut is confined to cases of an *attempt;* and, by 4 G. 4, c. 64, the
:t itself is repealed, so far as it relates to gaols and houses of cor-
:ction. The latter act is repealed by 28 & 29 V. c. 126, which
rovides that if any person shall be concerned in conveying into
ny prison any mask, vizor, or other disguise or instrument to
ıcilitate the escape of a prisoner, or shall in any way aid an
ıcape, whether an escape is effected or not, it is felony, and the
ffender may be sentenced to imprisonment with hard labour.

By 52 G. 3, c. 156, persons aiding the escape of *prisoners of war* are liable to transportation or penal servitude.

An *escape* of a person arrested upon criminal process, by eluding
ıe vigilance of his keepers before actual imprisonment, is punish-
ble by a fine or imprisonment. Officers, also, who, after an arrest,
egligently permit a felon to escape, are punishable by fine; but
›luntarily suffering an escape, renders them participators in the
rime for which the felon was in custody, whether treason, felony,
r trespass.

Private individuals, who have persons lawfully in their custody,
re guilty of an escape, if they suffer them illegally to depart; but
ıey may protect themselves from liability, by delivering over their
risoners to some legal and proper officer. A private person thus
ıilty of an escape incurs the punishment of fine or imprisonment,
· both.

II. GAOLERS AND OFFICERS.

In general, to oppose an officer in the execution of any *lawful* ›ocess in criminal cases, renders the party an accomplice in the ime.

A *gaoler* is the master or governor of a prison, and is so far

under the protection of the law, that if a person threaten him for keeping a prisoner in custody, he may be fined and imprisoned. And if, in repelling force, he commit homicide, it is justifiable; but on the contrary, if he be killed, it is murder in the assailant.

By 3 G. 1, c. 15, it is unlawful to purchase the office of gaoler, or any other office pertaining to the high sheriff, under pain of £500.

By 28 & 29 V. c. 126, gaolers permitting the sale of any spirituous or fermented liquors in prison are liable to a penalty of £20. By the same act, gaolers may punish certain offences in prison, as swearing, indecent behaviour during divine service, idleness at work, or wilful mismanagement of it, by solitary confinement, or keeping the prisoner on bread and water for any term not exceeding three days. They are required to attend the quarter sessions, to report the actual state of prisons, and to keep regular books, which are to be examined periodically, and lists of prisoners tried for felony are to be transmitted to the secretary of state, under a penalty of £20. The same act provides that persons introducing, or attempting by any means to introduce, letters or other articles not allowed by the rules of the prison, are liable to be fined, and if officers of the prison, forfeit their offices.

III. THEFT-BOTE

Is when the party robbed not only knows the thief, but takes his goods again, or other amends, upon agreement not to prosecute. It is frequently called *compounding of felony*, and is punished by the common law with fine and imprisonment.

By 24 & 25 V. c. 96, s. 100, if any person shall publicly advertise a reward for the return of any property *stolen* or *lost*, and in such advertisement use any words purporting that *no question will be asked*, or inquiry made after the person producing such property, or promise to return to any pawnbroker money advanced on such property, he shall, as well as the printer and publisher of such advertisement, be subject to a penalty of £50, to be recovered, with full costs of suit, by any person who will sue for the same. Under 33 & 34 V. c. 65, actions for these penalties cannot be commenced without the sanction of the attorney or solicitor-general.

Nearly akin to these offences is that of taking a reward under pretence of helping the owner to his stolen goods. This was a contrivance carried on to a great extent, in the beginning of the reign of George I., by the notorious Jonathan Wild, who had under him a regularly disciplined corps of thieves, who brought in their spoils to him; and he kept a sort of public office for restoring them to the owners at half-price. To prevent which, it was made a capital offence to take any reward under pretence of helping the owner to stolen goods; and now, by 24 & 25 V. c. 26, s. 101, every person

who shall corruptly take any money or reward on account of helping the owner to any property stolen, taken, or converted (unless he cause the offender to be brought to trial), shall be guilty of felony, subject to penal servitude for not above seven nor less than three years, or imprisonment not above two years, with or without hard labour, solitude, or whipping if under sixteen years of age.

IV. RECEIVERS OF STOLEN GOODS.

Receiving stolen goods, *knowing them to be stolen*, is only a misdemeanour at common law; but later statutes make the offender accessory to the theft, and felony, or misdemeanour. By 24 & 25 V. c. 96, s. 9, the receiver of any property feloniously stolen, extorted, or embezzled, is liable to penal servitude for not exceeding fourteen nor less than three years, or imprisonment not above two years, with or without hard labour or solitude. If the original offence amount only to *misdemeanour*, the receiver is subject to penal servitude for seven or not less than three years, or imprisonment not above two years, with or without hard labour or solitary confinement. In both these cases the receiver may be tried, whether or not the principal offender has been convicted.

The punishment for the offences enumerated in this and the preceding section are commonly evaded; and by the intervention of "*fences*" and low attorneys, those guilty of receiving stolen goods, and of taking rewards for the recovery of stolen property, are with difficulty brought to justice. By 34 & 35 V. c. 112, s. 19, evidence of previous conviction is allowed, subject to certain conditions on the trial of persons for having in their possession stolen goods (*See ante*, p. 504), and in the metropolis, persons suspected of having or carrying goods stolen or unlawfully obtained, and not giving a satisfactory account to the police magistrates, may be fined £5 or imprisoned in the house of correction for any time not exceeding two calendar months. On information on oath, that there is reasonable cause to suspect that goods have been unlawfully obtained, and are concealed, a special warrant may be issued to enter and search any dwelling-house or other place by day or night; the parties concealing, or knowingly assisting in concealing, the same may be examined by the magistrate, who is empowered to deliver to the owner goods unlawfully pawned, sold, or exchanged, in the possession of any broker or dealer in second-hand property, with or without compensation, 24 & 25 V. c. 96, s. 103.

The police have, in certain cases, power to enter in search of stolen goods, 34 & 35 V. c. 112.

Any person who prints or publishes advertisements for the return of stolen goods without questions being asked, or the like advertisements, forfeits the sum of fifty pounds to any person who will sue for the same by *action of debt*. But no action can be

commenced without the sanction of the attorney or solicitor-general, 33 & 34 V. c. 65.

V. POUND BREACH.

It having been found that in many cases the expense of prosecuting persons who have been guilty of rescuing cattle lawfully impounded, or of damaging the pound, has been out of proportion to the damage sustained, it is provided by 6 & 7 V. c. 30, that persons attempting to release cattle lawfully impounded, or damaging any pound, shall, upon conviction before two justices, forfeit any sum not exceeding £5, with costs; or, in default of payment, be imprisoned with hard labour for any term not exceeding three months nor less than fourteen days. The justices to proceed by summons, or may issue their warrant, and convict on the oath of one or more witnesses. *See* also 12 & 13 V. c. 92, which provides for the punishment of assaults on the keeper of a pound, and for the recovery of the expense of food given to cattle impounded.

VI. RETURNING FROM TRANSPORTATION.

Capital punishment for this offence is repealed by 4 & 5 W. 4, c. 67, and transportation for life substituted. Previously to transportation the offender to be imprisoned, with or without hard labour, in a penitentiary or prison, for any term not exceeding four years. Penal servitude, in this and similar cases, has been substituted for transportation, as previously stated.

VII. BARRETRY, MAINTENANCE, AND CHAMPERTY.

Common *barretry* is the frequent stirring up suits and quarrels among the people, and, in a common person, is punishable with fine and imprisonment; but if any one, after conviction for this offence, practise as a solicitor or agent in any suit, he may, by 12 G. 1, c. 29, be transported for seven years.

An offence of not less malignity is that of suing another in the name of a *fictitious* plaintiff, either one not in being at all, or one who is ignorant of the suit. This offence, if committed in any of the Queen's superior courts, is left, as a high contempt, to be punished at their discretion. But in courts of a lower degree, where the authority of the judge is not equally extensive, it is directed by 8 Eliz. c. 2, to be punished by six months' imprisonment and treble damages.

Maintenance bears a near relation to barretry, and is an officious intermeddling in a quarrel or suit that no way belongs to one, by assisting either party, with money or otherwise, to prosecute or defend it. It is punishable with fine and imprisonment. A man

may, however, maintain the suit of his near kinsman, servant, or poor neighbour, out of charity or compassion, with impunity.

Champerty is a species of maintenance, punishable in the same manner, and is a bargain with a plaintiff or defendant to share the land, debt, or other matter in dispute, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own cost.

Besides being criminal, contracts are void in equity when connected with the preceding class of offences. No person is permitted to assign over to another any interest or contingent profit of a *matter in dispute*, or to enter into an agreement to share it with him on consideration of the latter recovering it for him, and bearing the expenses. For such assignment to be valid a real and adequate consideration must be given. In *Strachan* v. *Brander* a gift from an heir-at-law, who on the death of his ancestor was living abroad ignorant of his rights, to a person who had given him the information and offered to support him in recovering the profits, was set aside, as also was a bond for recovering £2,000 in the event of his succeeding, in consideration of £1,000 advanced to assist him in carrying on the suit: Lord Rosslyn observed it savoured of *champerty*.

All sales of disputed interest in real property, by a party out of possession, are void by 32 H. 8, c. 8. The statute includes leaseholds as well as copyholds.

VIII. COMPOUNDING OF INFORMATIONS.

Compounding informations upon penal statutes is an offence of frequent occurrence, which furnishes to the common informer a lucrative but odious occupation, and affords to the habitual offender a ready means of escape from merited punishment.

By 18 Eliz. c. 5, if any persons informing, under pretence of any penal law, make any composition without leave of the court, to take any money or promise from the defendant to excuse him, he shall forfeit £10, stand two hours in the pillory, and be for ever disabled from suing on any popular or penal statute.

But this law is, in great part, ineffective for the ends of public justice; that part of it which inflicts the punishment of the pillory has been repealed; and in *King* v. *Crisp*, it was held not to extend to cases cognizable only by magistrates, in consequence of which informations are compounded with impunity.

The act applies, too, only to the *common informer*, and not to cases where penalty is given to the party aggrieved, 2 *Hawk*, 279.

Within the limits of the Metropolis Police District, any person compounding an information lodged for an offence by which the informer was not personally aggrieved may be fined £10. For further lessening the corrupt practices of common informers, the

magistrates are empowered, in all those cases where by statute the informer is entitled to a moiety of the penalty, to adjudge that no part of such penalty, or only such part as the magistrate shall think fit, shall be adjudged to the informer, 2 & 3 V. c. 71, ss. 33, 34.

IX. PERJURY AND SUBORNATION.

Perjury is defined to be a wilful false swearing in any *judicial* proceeding in a matter material to the issue or point in question, on a *lawful oath*, administered by some person of competent authority. To constitute the crime, the falsehood of the oath must be wilful, positive, and corrupt, and must not happen through haste, inadvertence, or weakness.

Subornation of perjury is the offence of procuring another to take such false oath as constitutes perjury in the principal.

A man may be indicted for perjury in swearing that he "*thinks*" or "*believes*" a fact to be true which he must know to be false; but the fact must be material to the case, or no injury is done.

The 14 & 15 V. c. 100, s. 19, empowers the superior courts, county courts, commissioners of bankruptcy and insolvency, sheriffs or their deputies, to direct prosecutions for perjury, and bind persons to give evidence. The same may be done in a common law court under 17 & 18 V. c. 125. By the former act provisions are made for simplifying indictments for perjury and like offences.

The punishment of perjury and subornation of perjury was formerly death; the forfeiture of goods; afterwards banishment or cutting out the tongue; it is now fine, imprisonment, or penal servitude.

X. CONSPIRACY.

This is a term of extensive and undefined application in law. To constitute the offence there must be *confederacy*, and for a *criminal* object; the confederates need not reside in one place, but may act in different places; and provided they co-operate in one common design, it is a conspiracy: in general, any combination to injure an individual, in his person, property, or character, is a conspiracy.

The offence is not confined to the prejudicing an individual; it may be to injure public trade, to affect public health, to violate the public peace, to insult public justice, or to do any act in itself illegal. A conspiracy to prevent a prosecution for a felony is an offence, 14 *Vs.* 65. So is one to raise the price of the funds, *Rex* v. *De Berenger* 3 *M.* & *S.* 72. A combination of wine merchants to sell pernicious liquor; of parish officers to marry paupers; and of any persons to procure the release of a prisoner by fictitious bail, is indictable as a conspiracy. It was unlawful for persons, for gain, to conspire to procure an appointment in the service of the East India Company, *Rex* v. *Sutton*. An agreement between private

individuals to support each other in all undertakings, lawful or otherwise, is illegal.

There are many cases in which the act itself would not be cognizable by law, if done by a single person, which become the subject of indictment when effected by several with a joint design. Thus, each person attending a theatre has a right to express his disapprobation of the piece acted, or a performer on the stage; but if several *agree* to condemn a play, or hiss an actor, they will be guilty of a conspiracy, 2 *Camp.* 358. Again, a person might singly and without criminal liability refuse to pay *rates* or *taxes*, as in many cases is the practice of the Quakers; but if several were to enter into an *agreement* for that purpose, or to act in concert, they would be guilty of conspiring for an unlawful object. The same applies to a number of persons agreeing not to pay the fine, or serve in the militia, if balloted.

The punishment of conspiracy is fine and imprisonment, at the discretion of the court.

XI. TRADES UNIONS AND COMBINATIONS.

Related to and often identical with the offence of *conspiracy* are confederacies among workpeople and their employers; ostensibly formed for the protection of their respective interests against each other, but frequently terminating in their reciprocal annoyance and injury.

In 1871 the laws relating to trades unions were amended, and 6 G. 4, c. 129, repealed, by 34 & 35 V. c. 31, which provides, that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to criminal prosecution for conspiracy or otherwise. Also, that the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be unlawful, so as to render void or voidable any agreement or trust.

Trades unions may be registered under this act, and may purchase, or take upon lease in the names of the trustees for the time being of such union, any land not exceeding one acre, and sell, exchange, mortgage, or let the same.

All real and personal estate whatsoever, belonging to any trade union registered under this act, shall be vested in the trustees for the time being of the trade union appointed, as provided by this act, for the use and benefit of such trade union and the members thereof, and the real or personal estate of any branch of a trade union shall be vested in the trustees of such branch, and be under the control of such trustees, their respective executors or administrators, according to their respective claims and interests; and upon the death or removal of any such trustees, the same shall

vest in the succeeding trustees, without conveyance, except in the case of stocks and securities in the public funds, which shall be transferred into the names of such new trustees; and in all actions, or suits, or indictments, or summary proceedings before any court of summary jurisdiction, touching or concerning any such property, the same shall be stated to be the property of the person or persons for the time being holding the said office of trustee, in their proper names, as trustees of such trade union, without any further description.

XII. BRIBERY, EMBRACERY, EXTORTION.

Bribery is when a judge, or other person concerned in the administration of justice, takes an undue reward to influence his behaviour in his office, and though the bribe is refused, the offerer is punishable. By 11 H. 4, it was provided that all judges and officers of the King, convicted of bribery, should forfeit treble the bribe, be punished at the King's will, and be discharged from his service for ever.

To offer money to a King's minister, for the purpose of obtaining a *public employment*, is held to be a misdemeanour, 4 *Burr.* 2495.

Officers of the revenue taking bribes are punishable by particular statutes; so, also, is the offence of bribery at parliamentary elections, *ante*, p. 43.

It has been before shown that, by 5 & 6 E. 6, c. 16, the *sale of offices* in courts of justice is prohibited on pain of forfeiture and disability; and the ecclesiastical courts are within the meaning of the act.

Embracery is an attempt to influence the jury in their verdict, by overawing them, or by promises, entreaties, or entertainments. The punishment of the embraceor, and of the jurors wilfully and corruptly consenting thereto, is, by 6 G. 4, c. 50, s. 61, fine and imprisonment.

Extortion signifies, in a large sense, any oppression under colour of right; but strictly, it is an officer taking, by colour of his office, any money or valuable, where none is due, or not so much as is due, or before it is due. The punishment is, removal from office, fine, or imprisonment.

XIII. DESTRUCTION OF RECORDS, WILLS, AND WRITINGS.

By 24 & 25 V. c. 96, s. 30, if any person steal, or for any *fraudulent purpose* take away or obliterate, injure, or destroy any record, writ, panel, process, deposition, affidavit, petition, rule, order, or any original document, whether belonging to any court of justice, or relating to any matter civil or criminal pending in any

court, or to any public office or employment, he is liable to penal servitude for three years, or imprisonment not above two years, with or without hard labour or solitude.

By 29th section of 24 & 25 V. c. 96, to steal, or for any *fraudulent purpose* conceal, cancel, obliterate, or destroy any will, codicil, or other testamentary instrument relative to real or personal property, is felony, subject to penal servitude for life, or not less than three years, or imprisonment not above two years, with or without hard labour or solitary confinement. Stealing or altering the writings or evidence relative to the title to lands, is penal servitude for three or imprisonment for two years.

The last offence against public justice we shall mention is the *negligence of public officers* intrusted with ministerial duties, as sheriffs, coroners, and constables; which makes the offender liable to be fined, and, in flagrant cases, will amount to a forfeiture of office, if a beneficial one. Other punishments for similar offences are in many cases provided by statute.

CHAPTER VIII.

Offences against the Public Pence.

THESE offences are either such as are an actual breach of the peace, or constructively so by tending to make others break it. Both these species of offence are either felonies or misdemeanours. The felonious breaches of the peace are strained up to that degree of criminality by several modern statutes: we shall begin with the less penal offences against the peace.

I. CHALLENGE TO FIGHT.

To challenge to fight, either by word or letter, or be the bearer of such challenge, is an indictable offence, punishable with fine and imprisonment. It is an offence, though the provocation to fight does not succeed; and it is a misdemeanour merely to endeavour to provoke another to send a challenge, 6 *East.* 464. But mere words which, though they may produce a challenge, do not directly tend to that issue, as calling a man a *liar* or *knave*, are not necessarily criminal, though it is probable they would be so if it could be shown they were meant to provoke a challenge.

II. AFFRAY,

From the French *effrayer*, "to frighten," signifies a fighting between two or more in some *public* place, for if the fighting be

private, it is not an affray, but an assault. No angry or threatening words, however violent, amount to an affray; but if a person arm himself with dangerous or unusual weapons in a way to excite *terror* in the people, it is an affray. Persons present and assisting at such disorder as a prize-fight, are guilty of an affray (*Arnold on Public Meetings*, 14). The punishment of common affray is by fine and imprisonment. Affrays may be suppressed by any private person present; but the constable, who is bound to keep the peace, may break open doors to suppress an affray, or apprehend the affrayers.

III. ROUT, UNLAWFUL ASSEMBLY, RIOT.

A *rout* is a disturbance of the peace by persons meeting together to commit with violence an unlawful act, without actually committing it. If any step be taken to execute the unlawful act proposed, the riotous assembly become rioters. An instance has occurred of parties being indicted for a rout for having gone to the ground where a prize-fight was to take place, and for which all preparations were made, but no blow was struck, *Wise on Riots*, 28. The defendants pleaded guilty, and the point was not argued.

An *unlawful assembly* is any meeting of *three* or more persons under such alarming circumstances, either from large numbers, or mode of assembling, as in the opinion of rational men may endanger the peace, without being actually guilty of any aggressive act, *Reg. v. Vincent*, 9 C. & P. 91. As to the degree of alarm arising from excessive numbers, or mode of assembling, essential to render a meeting unlawful, these are incidents for a jury to appreciate, duly impressed on the one hand with the importance of the maintenance of the public peace, and on the other with a proper regard for the invaluable right of good citizens publicly to meet and freely discuss any question of general interest or excitement.

A *riot* is a tumultuous disturbance of the peace by *three* persons or more assembling together without lawful authority, and jointly committing, to the terror of the people, some unlawful and violent act. Three persons are necessary to constitute a riot, as two are for an affray or a conspiracy; and, to make the unlawful assembly a riotous one, an outrage must be actually perpetrated. Women, whether married or single, are punishable as rioters, and also infants, if old enough to know that they were doing wrong. If parties meet with the intention of aiding and encouraging a prize-fight, which is clearly illegal and a breach of the peace, and if, while so intending, the fight takes place, all the parties present are liable to be indicted for a riot.

The punishment of the three preceding offences, namely, a rout, unlawful assembly, and riot, is by the common law discretionary fine or imprisonment, or both.

Stat. 24 & 25 V. c. 97, ss. 11, 12, provides for the punishment of malicious injury to property by rioters. (*See* the next section.)

IV. RIOT ACT.

The unlawful assemblies described in the last section may be of such ordinary character as respects numbers, intentions, and acts, as renders the common law adequate to their punishment; but, from the violence and excessive numbers assembling, they may assume a more formidable form, and fall within the cognizance of a statute expressly made for their repression. This leads us to speak of the Riot Act, passed in the first year of the reign of George I., for the more effectual prevention of tumultuous assemblages of people.

By this act, the 1 G. 1, c 5, if *twelve* persons or more are unlawfully assembled, to the disturbance of the peace, and continue together *one hour* after being commanded by proclamation of one justice of peace, sheriff or under-sheriff, to disperse, they are guilty of capital felony. Silence must be commanded, and proclamation made with loud voice, in these, or words to the like effect:—

"Our sovereign lord [lady] the king [queen] chargeth and commandeth all persons, being assembled, immediately to disperse themselves, and peacefully to depart to their habitations, or to their lawful business, upon the pains contained in the act made in the first year of King George I., for preventing tumults and riotous assemblies. God save the king [queen]."

If the reading of the proclamation be by force opposed or hindered, such hinderers and opposers are felons; and all persons to whom such proclamation may have been made, and *knowing such hindrance* and not dispersing, are felons. But the death punishment under this statute has been mitigated by 1 V. c. 91, to transportation for life, or fifteen years, or imprisonment for three years, at the discretion of the court.

It appears from the decision of Mr. Baron Vaughan, and Mr. Justice Alderson, *Rex* v. *Child*, 4 *C.* & *P.* 442, that if the magistrate, in reading the proclamation, omit the words "God save the king," persons remaining together an hour after the reading of it cannot be convicted under the statute.

By 24 & 25 V. c. 97, s. 11, if any persons riotously and tumultuously assembled shall, with force, begin to demolish any church or chapel, or other place for divine worship; or any house, stable, coachhouse, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, or granary; or any building or erection used in farming or carrying on any trade or manufacture; or any machinery employed in any manufacture, or for sinking, ventilating, draining, or working any mine; or any staith, building or erection used in any mine, or any bridge, waggon-way, or trunk, they are punishable with penal servitude for life or not less than three years, or im-

prisonment not above two years, with or without hard labour or solitary confinement.

Upon the trial of the Bristol rioters, Jan. 2, 1832, Chief Justice Tindal explained the law with great minuteness relative to riotous and tumultuous meetings, and the duties of private individuals in relation to such gatherings. He said, "By the common law, every *private person* might lawfully endeavour, without any warrant or sanction of the magistrate, to suppress a riot by every means in his power: he might disperse those who were assembled and prevent others who were coming up from joining the rest; and to do this to his utmost ability was his duty as a good subject. If the riot be general and dangerous, he might *arm* himself against the evil-doers to keep the peace. Such was the opinion of all the judges in the time of Elizabeth; though the judges add, 'It would be more discreet in an individual to attend and be assistant to the sheriffs, justices, and other officers.'"

By 13 H. 4, c. 2, two justices, with the sheriff, may come with the power of the county to arrest rioters, and every one is bound to attend them on pain of fine and imprisonment.

The duties imposed on private persons, in case of riots, are equally obligatory on soldiers, as already adverted to.

V. TUMULTUOUS PETITIONING.

The offence against the public peace, by tumultuous petitioning, was carried to a great height in the times preceding the civil war, and it was to prevent the recurrence of the disturbance that the 13 C. 2, c. 5, was passed. By this statute it is enacted that the soliciting or procuring the names of above *twenty* persons to any petition to the king, or either house of parliament, for any alteration in church or state, unless the contents thereof be approved by three justices of the peace of the county, or the majority of the grand jury, either of the assize or quarter sessions; or, in London, by the lord mayor, aldermen, and common council; or presenting any petition to the king or parliament, accompanied by more than ten persons, incurs, in either case, a penalty of £100, and three months' imprisonment.

It is only under this statute that the corporation of London, since the Restoration, have usually taken the lead in petitions to parliament for the alteration of any established law or grievance; but it seems not to warrant a petition from the Common Hall.

On the trial of Lord George Gordon, it was contended that the article in the Bill of Rights which declares that it is the right of the subject to petition, had, virtually, repealed the act of Charles II. This, however, was denied by Lord Mansfield, *Douglas*, 571; but the better opinion appears to be that the people have a right to petition their representatives in parliament, and that the

act of Charles, so far at least as limiting the number of names, is abrogated by the Bill of Rights, and the acknowledged practice is consistent with this opinion.

VI. APPEARING OR GOING ARMED.

When the wearing of swords was fashionable, and arms were part of a gentleman's personal equipment, any unusual or dangerous weapons were prohibited; as arms not suited to the person's quality, or as the showing of force at unsuitable times, caused terror, or were incentives to breaches of the peace. The 13 E. 1 (*statuta civitatis Londin.*), and the 2 E. 3, c. 2, expressly prohibit the *riding or going armed*, upon pain of forfeiture of the arms, and imprisonment. The law allows every Englishman to use arms to defend himself against *violence*, to suppress rioters, or that he may defend his dwelling-house against felonious attack; but a person would not be justified in the use of fire-arms, or other deadly weapon, to resist the perpetration of a misdemeanour; and the preparing or collecting arms for the purpose of violating the law or resisting lawful authority is clearly illegal.—(Attorney-General, Chester, Aug. 14, 1839.) The frequenting public meetings *armed* is indictable; a justice may hold a party to bail for so doing. The Bill of Rights does not repeal, but confirms the old statutes, by enacting that Protestants may have arms suited to their condition, and as *allowed by law*.

A person appearing armed with a gun, or other offensive weapon, with intent to commit a felonious act, is punishable, under the Vagrant Act, as a rogue and vagabond.

Training to military exercises, without the sanction of public authority, is expressly prohibited. *See* p. 637, *ante*.

VII. EXTORTION BY THREATENING LETTERS.

By 24 & 25 V. c. 96, ss. 44–46, if any person *knowingly send* or *deliver* any letter or writing, demanding with menaces, without reasonable cause, any money or valuable, or accuse or threaten to accuse, or send or deliver any letter or writing accusing or threatening to accuse, any person of any crime punishable with death or penal servitude, or of any assault with intent to commit a rape or unnatural crime, he is liable to penal servitude for life, or not less than three years, or imprisonment for two years, with or without hard labour or solitary confinement.

Persons accusing others, or threatening to accuse others, of the crimes referred to, are guilty of felony, subject to penal servitude or imprisonment.

By 24 & 25 V. c. 97, s. 50, if a person knowingly send, deliver, utter, or indirectly cause to be received, any letter or writing threatening to burn or destroy any house, building, or farm produce, or any ship or vessel, or to wound or maim any cattle, he is liable to penal servitude for not exceeding ten nor less than three years, or imprisonment for not above two years, with or without hard labour, solitude, or whipping if under sixteen years of age.

CHAPTER IX.

Offences against Commerce and Trade.

The commercial code of the country has undergone material alterations in late sessions of parliament, and many regulations, founded on mistaken notions of the public interest, and which interfered with the general principle of commercial freedom, have been repealed. One of the most notable of these reforms was the repeal in 1854, by the 17 & 18 V. c. 90, of all acts passed in England, Ireland, or Scotland, in number twenty, and extending, in England, from 37 Hen. 8, c. 9, to 13 & 14 V. c. 56, pertaining to usury, or the offence of exacting a higher rate of interest for money lent than that the law prescribed. By this repeal the moneyed man is left to the same unrestricted freedom in the employment of his capital which the landlord exercises in the disposal of his land, or the mechanic and the labourer in the disposal of their industry. The chief remaining offences affecting commerce are the following :—

I. SMUGGLING.

This offence consists in the clandestine importing or exporting prohibited goods, or goods without paying the duties imposed thereon by the laws of the customs and excise.

By 16 & 17 V. c. 107, every person is liable to transportation for life, or not less than fifteen years or to three years imprisonment, who maliciously shoots at any vessel in her Majesty's navy, or in the revenue service, or at any officer while in the due execution of his duty: aiders and abettors are comprehended. Resisting any officer in the execution of his duty subjects the offender to transportation for seven years, or imprisonment with hard labour for not exceeding three years.

Persons who knowingly harbour, keep, or conceal smuggled goods, or knowingly suffer or permit it to be so done, to forfeit treble the value, or pay the penalty of £100. Persons offering

goods for sale under the pretext that they are prohibited or have not paid duty, forfeit treble the value.

Searching the Person.—Officers may search, for smuggled goods, any person on board a vessel within the limits of any port of the United Kingdom, or after they have landed; and if obstructed in the execution of their duty the penalty is £100. But *before* a person is searched, he may require the officer to take him before a justice, or superior officer of the customs, who shall determine whether there be reasonable ground to suppose that such person has in his possession any uncustomed or prohibited goods. Officer misconducting himself in such personal search is subject to a £10 penalty. Further provisions have been made by subsequent statutes.

II. CHEATING.

By this is meant any fraudulent practices, by which a person is defrauded of his rights; as by false weights and measures, the selling of goods with counterfeit marks, playing with false dice, or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; all of which offences are punishable with fine and imprisonment.

To constitute cheating, a merely *false representation* is not sufficient. That falls under the head of the next-mentioned offence. In cheating there must be a plausible contrivance, as by false weights and measures, against which the ordinary prudence of individuals is no security. So that selling by false weights is an indictable offence, though selling *under* measure is ground only for civil action. The selling of bad wine, pretending that it is good, has been held indictable, 2 *Raym.* 1179: but Lord Ellenborough suggested that this was a case of conspiracy, or is to be valid only on the ground that the wine sold was unwholesome to man.

Cheating at a race is indictable.

By 8 & 9 V. c. 109, s. 17, cheating at play is made punishable as obtaining money under false pretences.

Under the head of cheating, may be included *false personation*; which consists in the offender falsely representing himself or assuming to be any other person, whether such other person be alive or dead, or whether or not such other person ever existed; the object of the offender being the fraudulent obtaining of another's property.

False personation, to receive the wages, pay, half-pay, prize-money, bounty-money, pension, or gratuity, in the army or navy; or falsely personating the owner of any share or interest in any stock, annuity, or other public fund, transferable at the Bank of England, or South Sea House, are crimes punishable with transportation for life, or shorter period, or imprisonment.

III. FRAUDS IN TRADE MARKS.

The laws relating to the fraudulent marking of merchandise, or the sale of merchandise falsely marked for the purpose of fraud, were amended in 1862 by the 25 & 26 V. c. 88. *Trade marks* are defined to include every name, signature, word, letter, device, emblem, figure, sign, seal, stamp, diagram, label, ticket, or other mark previously lawfully used by any person to denote any chattel or thing to be the manufacture, workmanship, or production of such person, or made or sold by the same. The act also applies to marks used and required by statute to be attached to registered designs.

By s. 2, forging a trade mark with intent to defraud, or enable another person to defraud, or falsely applying any mark with such intent, is a misdemeanour; the merchandise so fraudulently marked to be forfeited, together with the instruments by which the counterfeit marks are applied. Applying a forged trade mark to any cask, bottle, wrapper, or case in which an article is sold, or intended to be sold, is a like offence, and subject to forfeiture, s. 3. Every person who sells or exposes to sale any article with false marks, knowing them to be forged, is liable to forfeit the value to her Majesty; and a further sum not exceeding £5, nor less than 10*s*. A person who has sold an article with false marks is bound to give information, on demand in writing, within forty-eight hours, where he procured it; penalty on refusal of the summons by a justice £5, and forfeiture of the article, ss. 4–6.

Additions to, or alterations of, trade marks with intent to defraud, are forgeries. Marking any false indication of number, quantity, measure, or weight of an article with intent to defraud, penalty equal to the value of the article, and a further sum not above £5, nor under 5*s*. Selling or exposing for sale any article with such false description, or of the place or country in which it has been made, penalty £5, or not less than 5*s*.

Provisions of the act do not make it an offence to apply names or words known to be used for the description of any particular classes of manufacture. Conviction under the act does not curtail any right of civil remedy.

By s. 13, every person who may aid or procure the commission of any offence which is made a misdemeanour under the act, is also guilty of a misdemeanour. The punishment of such misdemeanour is imprisonment for not more than two years, with or without hard labour, or by fine, or both, by imprisonment with or without hard labour and fine, or by imprisonment until the fine, if any, be paid, s. 14. No action for penalty or proceeding for conviction to ensue after three years subsequent to the offence, or one year next after the discovery of the offence, s. 18.

By ss. 19 and 20, vendors of an article with a trade mark to be

deemed liable to contract that the mark is genuine, and that any description of its quantity or quality is true. Persons aggrieved by forgeries may recover damages against the guilty party; but defendant obtaining a verdict to have full indemnity for costs. A plaintiff suing for a penalty may be compelled to give security for costs.

To prevent the false representations of grant of *medals or certificates* by the Commissioners of the Exhibitions of 1851 and 1862, the 28 & 29 V. c. 119, enacts that if any trader falsely represents that he has obtained a medal or certificate from the Exhibition Commissioners in respect of any article or process for which it has been awarded, or falsely and knowingly represents any other trader to have obtained such, or falsely and knowingly represents any article sold or exposed for sale has been made by any process invented by a person who has obtained such distinction, he shall, for a first offence, forfeit to her Majesty not exceeding £5, or, for a subsequent offence, not above £20. Penalties summarily recoverable before two justices in England or Ireland, and in Scotland may be prosecuted before the sheriff or two county justices. Act does not affect any civil right of remedy.

IV. FALSE PRETENCES.

This is another and common species of fraud. In order to constitute a false pretence, there must be a fraudulent misrepresentation as to the existence or non-existence of some specific fact, by which, wholly or in part, property is obtained. If a man purchasing goods promises to call and pay for them the next day, this is a mere prospective engagement, but no misrepresentation as to any specific fact; but if he be intrusted with goods, on giving his promissory note for payment, falsely representing that the banker to whom such note is directed has a sufficient balance of the maker's in hand, the crime is complete. In one case, where a party, to induce his banker to honour his cheques, drew a bill on a person on whom he had no right to draw, and which had no chance of being paid, in consequence of which the banker paid his cheques, it was adjudged not to be a false pretence, because he only obtained *credit;* it would have been otherwise had he obtained *money* upon the bill. But obtaining credit by fraud is now punishable under the Bankruptcy Act, 1869.

By the Mutiny Act, an *apprentice* enlisting in the army, and when brought before a magistrate to be attested concealing his apprenticeship, may be indicted for obtaining the bounty-money under a false pretence.

A minor going about pretending he is of age, and obtaining money or goods, may be punished as a common cheat.

By 24 & 25 V. c. 96, s. 88, the punishment for obtaining any money, chattel, or valuable security, by any false pretences, with intent to cheat or defraud, is penal servitude for three years, or imprisonment not above two years, with or without hard labour or solitude. Where there is an intent to defraud, coupled with an intent to steal, and the offender receive the goods, he may be convicted of theft though legally entitled to his acquittal for the false pretence. This provision was made to avert an entire failure of justice from the nice legal distinctions between theft and fraud.

Section 90 of the act is important, providing that whoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any person to execute, make, accept, endorse, or destroy the whole or any part of any *valuable security*, or to write, impress, or affix his name, or the name of any other person, company, firm, or partnership, or the seal of any body corporate, company, or society, upon any paper or parchment, in order that the same may be converted or used as a valuable security, is liable to penal servitude for three years, or imprisonment not above two years, with or without hard labour or solitary confinement. This of course includes bills of exchange, promissory notes, and all negotiable securities.

V. FRAUDS BY TRUSTEES, BANKERS, DIRECTORS, AND OTHERS.

By 24 & 25 V. c. 96, s. 80, if any person, being a trustee of any property for the benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same, or with such intent dispose of or destroy such property, he is guilty of a misdemeanour. Any *banker*, *merchant*, *broker*, *attorney*, *factor*, or *agent*, being intrusted, for safe custody, with the property of any other person, who shall fraudulently sell, negotiate, transfer, pledge, or convert such property to his own use, is guilty of misdemeanour. Persons under powers of attorney fraudulently selling property, similarly guilty. Bailees fraudulently converting property to their own use, guilty of larceny. Directors, members, or officers of any body corporate or public company, fraudulently appropriating property, or keeping fraudulent accounts, or wilfully destroying books, papers, writing, or securities, or who shall make, circulate, or publish, or concur in any written statement or account which they know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor, or to induce any person to become a shareholder or partner therein, or to enter into any security, are guilty of a misdemeanour, punishable by penal servitude for seven or three years, or imprisonment not above two years. Persons are equally guilty in receiving property fraudulently acquired or disposed of, knowing the same to have been fraudulently obtained, ss. 75–79.

VI. EMBEZZLEMENT.

This is a kindred offence to the three preceding. It consists in the wrongful appropriation by the offender of money or goods with which he is intrusted for another's use. This is not cheating, because there is no fraudulent contrivance; nor is any false pretence used; neither is it theft, since no property is taken, the offender being previously in lawful possession.

Embezzlement is chiefly committed by agents, clerks, or servants, having the management of the business of others, and the offence is aggravated by breach of confidence being coupled with the criminal application of the property of their employer.

The range of punishment for embezzlement is very wide, extending from fine and imprisonment to transportation for life or lesser term, according to the heinousness of the offence.

By 1 V. c. 36, s. 26, every person employed under the Post Office, who shall steal, embezzle, secrete, or destroy a post-letter, shall either be transported for seven years, or be imprisoned for not exceeding three; and if any such post-letter shall contain any chattel or money, or valuable security, shall be transported for life. Stealing, secreting, or delaying printed votes, or proceedings in parliament, or a newspaper, subjects to fine and imprisonment.

By 24 & 25 V. c. 96, s. 68, if a *clerk* or *servant*, or any person employed in that capacity, in virtue of such employment receive or take into his possession any chattel, money, or valuable security, on account of his employer, and *fraudulently embezzle* it, or any part thereof, he is deemed to have feloniously stolen the same, and is liable to penal servitude for fourteen or not less than three years, or to imprisonment not above two years, with or without hard labour or solitude.

By s. 75, if any money, or security for the payment of money, be intrusted to any *banker*, *merchant*, *broker*, *attorney*, or *other agent*, with any direction in writing to apply such money, or part thereof, or the proceeds, for any purpose specified in such direction, and he convert the same to his own use, or any part thereof, such offender is liable to penal servitude for not exceeding seven nor less than three years, or imprisonment not above two years, with or without hard labour or solitary confinement.

A like punishment is enacted if any banker or agent, &c., sell, negotiate, transfer, pledge, or in any manner convert to his own use, any chattel, valuable security, or power of attorney for the transfer of stock, intrusted to him for safe custody, or other *special* purpose.

But these clauses do not affect trustees or mortgagees; nor banker, merchant, or other agent receiving money due on securities, or disposing of securities on which they have a lien.

By 31 & 32 V. c. 116, if any member of any co-partnership is

guilty of converting to his own use the co-partnership property, he is rendered liable to be tried and punished as if he had not been a member of the co-partnership.

VII. MONOPOLY.

By 21 Jac. 1, c. 3, all monopolies, grants, letters patent, and license, for the sole buying, selling, and making of goods and manufactures, are declared void, except PATENTS for fourteen years for the sole working or making of any new manufacture which is not mischievous to the state or generally inconvenient. Grants by act of parliament to any corporation, company, or society, for the enlargement of trade; and letters patent concerning any printing, making gunpowder, ordnance, &c., are excepted.

CHAPTER X.

Nuisances and Offences against Public Health.

I. COMMON NUISANCES.

THE nature of private nuisances and the legal modes of individual reparation have been described under the head of Civil Injuries. Common nuisances are annoyances of a more general and heinous character, and are offences against the public, either by doing a thing which tends to the detriment of the community, or by neglecting to do anything which the common good requires.

Injurious and offensive trades and manufactures, which, when hurtful to individuals, are actionable, are, when detrimental to the public health or convenience, punishable by public prosecution, and subject to fine according to the magnitude of the offence.

Keeping of hogs in a city or market town is indictable as a common nuisance; and from the offensive effluvia from tallow-melters, and many other trades, they would, doubtless, fall under the same denomination if their use were less essential.

Disorderly inns or alehouses, unlicensed stage-plays, booths, or stages for rope-dancers, mountebanks, and the like, are public nuisances, which may be indicted and fined, 1 *Hawk.* 198. The making and selling of *fireworks* and *squibs*, or throwing them about in any street, was a nuisance punishable by fine—for the making and selling, £5; and for the throwing or firing, 20s.; by 9 & 10 W. 3, c. 7—until repealed by the next-mentioned act.

Gunpowder.—Former acts on the keeping and carriage of gunpowder and compositions of an explosive nature, and on the manufacture, sale, and use of fireworks, are repealed by 23 & 24 V. c. 139. By s. 1, no charcoal is to be kept within twenty yards of

any mill or engine for making gunpowder. Regulations are made as to the making of loaded percussion caps, and the keeping of ammunition, fireworks, fulminating mercury, or any other explosive preparation, s. 6. No person to sell any fireworks without a license, nor to any person apparently under *sixteen years of age;* penalty, any sum not above £5. A like penalty for throwing any squib or other firework into any thoroughfare or public place, s. 9. Justices to license places for keeping and making gunpowder, and who may make rules for their servants, s. 8. No dealer in gunpowder or manufacturer of fireworks to have or keep above 200lbs. of gunpowder, or, not being a dealer or manufacturer, above 50lbs.; licenses conditional on the adoption of precautions against danger, s. 13. Owners of mills may make exceptions for mines. By s. 20, not more than 30 barrels by land, and 500 by water, to be conveyed at one time. Penalty for smoking on board vessels loaded with gunpowder, s. 22. Regulations for security of vessels in the Thames. Conservators of river to appoint searchers. Act not to affect mills erected on crown lands; nor gunpowder on board her Majesty's ships, nor to hinder unlimited quantities of gunpowder being conveyed from ships below Blackwall.

By 24 & 25 V. c. 130, the power of granting licenses is transferred from justices in quarter sessions to justices in petty sessions. By s. 4, the manufacturers of safety fusees are subject to the same provisions as the manufacturers of cartridges, fireworks, and rockets, under the 23 & 24 V. c. 139; and by 25 & 26 V. c. 98, 23 & 24 V. c. 139, is made to apply to loaded percussion caps, ammunition, fireworks, fulminating mercury, or anything else of an explosive nature.

By the Petroleum Act, 1871 (34 & 35 V. c. 105), the laws relating to petroleum are consolidated and amended. Where any petroleum is kept at any place, except during the seven days next after it has been imported, or is sent or conveyed by land or water between any two places in the United Kingdom, or is sold or exposed for sale,—the vessel containing such petroleum shall have attached thereto a label in conspicuous characters, stating the description of the petroleum, with the addition of the words, "highly inflammable," and with the addition, in the case of a vessel kept, of the name and address of the consignee or owner; in the case of a vessel sent or conveyed, of the name and address of the sender; in the case of a vessel sold or exposed for sale, of the name and address of the vendor. All petroleum to which the act applies, which is kept, sent, conveyed, sold, or exposed for sale, in contravention of this section, shall, together with the vessel containing the same, be forfeited, and, in addition thereto, the person keeping, sending, selling, or exposing for sale the same shall, for each offence, be liable to a penalty not exceeding five pounds.

Save as hereinafter mentioned, after the passing of this act, petroleum to *which this act* applies shall not be kept, except in

pursuance of a license given by such local authority as is in the act mentioned.

All petroleum kept in contravention of this section shall, together with the vessel containing the same, be forfeited, and, in addition thereto, the occupier of the place in which such petroleum is so kept shall be liable to a penalty not exceeding twenty pounds a day for each day during which such petroleum is so kept.

This section shall not apply to any petroleum kept either for private use or for sale, provided the following conditions are complied with:—

1. That it is kept in separate glass, earthenware, or metal vessels, each of which contains not more than a pint, and is securely stopped.

2. That the aggregate amount kept, supposing the whole contents of the vessels to be in bulk, does not exceed three gallons.

The "local authority" is to be, as the case may require, the Lord Mayor and aldermen, the Metropolitan Board of Works, the town council, trustees, commissioners, harbour authority, justices in petty sessions, &c.

Smoke Nuisance in London.—By 16 & 17 V. c. 128, every furnace employed in the metropolis in the working of engines by steam, and every furnace employed in any mill, factory, printing-house, dye-house, iron-foundry, glass-house, distillery, brewhouse, sugar-refinery, bakehouse, gas-works, water-works, or other building, used for the purpose of trade or manufacture (although a steam-engine be not used), shall be so constructed or altered, as to "consume or burn the smoke" arising from such furnaces. Penalty on owner, or foreman, or other person employed by owner, not exceeding £5 nor less than 40*s.*; on a second conviction, £10. Persons carrying on any *trade* or *business* which occasions noxious effluvia, or otherwise annoys the neighbourhood, without using the best means for preventing such smoke or annoyance, seem liable, s. 1.

Steam-vessels above London Bridge are required to consume or burn their smoke, under like penalties.

S. 3 explains that the words, to "consume or burn the smoke" are not intended to mean to "consume or burn *all* the smoke," but so much as in the opinion of magistrates shall be deemed practicable or possible. Constables may be empowered to enter and inspect furnaces and steam-engines. No information to be laid except by authority of secretary of state, or of commissioner of police, nor by secretary or commissioner, unless local authorities fail to proceed.

The exemption of glass and pottery works from the act is repealed by 19 & 20 V. c. 107, and they became liable after Jan. 1, 1858. All steam-vessels plying between London Bridge and the westward of the Nore Light, are made subject to the same provisions as steamers above London Bridge. Furnaces of public

baths and washhouses included by 20 V. c. 107 : 29 & 30 V. c. 90, extends the prohibition of smoke nuisance to furnaces in any place.

Dog Nuisance.—To suffer any *mischievous dog* to go loose or unmuzzled, to the danger and annoyance of neighbours or passengers, is an indictable offence, and an action for damages will also lie against the owner. But an action cannot be brought against the owner of a dog for biting a person, unless owner has had notice of his having bitten somebody at least once before.

By 28 & 29 V. c. 60, the owner of every dog is liable in damages for injury done to any cattle or sheep by his dog; and it is not necessary for the party seeking damages to show a previous mischievous propensity in such dog, or the owner's knowledge of such propensity, or that the injury was attributable to neglect on the part of the owner. Damages recoverable in any court of competent jurisdiction by the owner of cattle or sheep killed or injured. Occupier of a house where dog lives or remains deemed the owner, unless he can prove the contrary, at the time of the injury; or if more occupiers than one, the lodger who occupies a room or apartment where dog lives or remains is liable.

In general, it seems that the owner of any *vicious animal*, after notice of its having done an injury, is *bound to secure it at all events*, and is liable for damages to a party subsequently injured, if the mode he has adopted to secure it proves to be insufficient. Thus, in an action for injury by a vicious bull, the plaintiff recovered, though it appeared the bull was attracted by a cow in a particular state which the plaintiff was driving past the field where the bull was, and that the plaintiff first struck the bull to drive him away from the cow, *Blackman* v. *Simmons*, 3 *C.* & *P.* 138. Again, in the court of Queen's Bench (June 2, 1846), the judges refused to disturb a verdict obtained for damages given against the owner of a vicious monkey that had bitten the plaintiff.

By 2 & 3 V. c. 47, the metropolitan police are authorized to destroy any dog or other animal reasonably suspected to be in a rabid state, or which has been bitten by any animal suspected to be rabid; and the owner of such dog or animal who permits the same to be at large after having information or reasonable ground to believe it to be rabid, or to have been bitten by a rabid animal, is liable to a penalty of £5.

Further regulations as to dogs in the metropolis have been made by 30 & 31 V. c. 134, s. 18.

The Dogs Act, 1871 (34 & 35 V. c. 56), provides, that stray dogs may be detained and sold or destroyed by the police. Dangerous dogs may be destroyed.

Making great *noises* in the streets, in the night, by trumpets or otherwise, is a nuisance. Blowing a horn or using any other noisy instrument in the streets of the metropolis, for the purpose of selling or distributing any article, or obtaining money, subjects to a penalty. Any unauthorized obstruction of the highway, as by

causing a *crowd*, is an indictable offence, *Rex* v. *Carlisle*, *December* 1, 1834.

For facilitating the prosecution and suppression of a *common bawdy-house*, the 25 G. 2, c. 36, provides, that if two inhabitants of any parish, paying scot and lot, give notice in writing to the constable of any person keeping a bawdy-house, the constable shall go with them to a justice, and upon their making oath that they believe the notice to be true, and entering into a recognizance in £20 each to produce evidence, the constable shall enter into recognizance in the sum of £30 to prosecute the same with effect at the next sessions or assizes. Provision is made for the payment of the constable's expenses in the prosecution, and also of £10 to each of the inhabitants by the overseer of the parish. The party accused may be then bound over to appear, and the magistrate may also take security for their good behaviour in the meantime. *See* further, 58 G. 3, c. 70.

II. ACTS FOR THE PRESERVATION OF THE PUBLIC HEALTH.

The large increase of town population has given rise to several acts of parliament for the better preservation of the health of the people. One important division of the subject is that relative to public baths and washhouses, the erection of labourers' dwellings, and the regulation of common lodging-houses, previously referred to, from pp. 382 to 385. In 1845 a cognate branch of sanitary legislation took its rise from the dread of the approach of cholera, which at that period was raging on the European continent, and sought to be averted in that and succeeding years by acts for the removal of nuisances. These preventive efforts culminated in 1865 and 1866, by the acts for the utilization of sewage and the amendment of the laws relating to the public health.

The Sewage Utilization Act, the 28 & 29 V. c. 75, does not apply to the metropolis nor certain other towns under special acts of parliament. For other places in England the sewer authorities are defined to be, in boroughs, the municipal corporation; in towns, the persons intrusted with cleansing or paving. Powers are given to these authorities or other governing body in towns to keep their district properly cleansed and drained, and to defray expenses out of the rates levied for the purpose, or they may borrow money on the security of such rates. Several amending acts have been passed, the most important of which is 30 & 31 V. c. 113, which defines the sewer authority, and its powers in the different districts.

By the Sanitary Act, 1866 (29 & 30 V. c. 90), power is given to the sewer authority to form a committee of its members, or of others, if contributors to the rate out of which expenses are to be paid. Next follow clauses for the formation of special drainage districts. By s. 10, if a house within a district is without a drain,

r drainage insufficient, the owner may be required within reasonble time to make a sufficient drain. If the supply of water in a istrict is inadequate, sewer authority may provide a supply by the igging of wells, making and maintaining reservoirs, and doing any ther necessary works. Requisition in writing of ten inhabitants i made equivalent to a medical certificate in the removal of a uisance, s. 18. A nuisance is defined to be a house so overrowded as to be prejudicial to health; or a factory, or workshop, r a chimney emitting unwholesome effluvia. Power is given to uise premises to be cleansed or disinfected. Carriages to be rovided for the conveyance of infected persons to a hospital. nfected persons entering a public conveyance, without notifying ie same to the driver, liable to penalty; or if lodging in a room ccupied by more than one family, they are made removable to a ospital, by and at the expense of the nuisance authority under the rder of a justice, ss. 25, 26. Sections to s. 34, chiefly apply to ie cleansing of premises, the disinfection of woollen articles, othing, or bedding; the removal of sick persons brought by ship;) places for the reception of dead bodies, and the repayment of xpenses incurred by the nuisance authority, which is defined by 15 to mean any authority empowered to execute the Nuisances emoval Acts.

S. 35 is general; applying to the metropolis, inclusive of the ity of London, and to any city, municipal borough, or town ith not less than 5,000 inhabitants; empowering the nuisance uthority, with the assent of a secretary of state, published in the *ondon Gazette*. to make regulations as follows:—1. For fixing the umber of persons who may occupy a house, or part let in lodgings, r occupied by more than one family. 2. For the registration of ouses so occupied. 3. For their inspection and keeping them leanly and wholesome. 4. For enforcing privy accommodation, leanliness, and ventilation, proportioned to the number of occuiers. 5. For cleansing and lime-washing at stated times. Penalty ot exceeding 20*s*. for every day's default of regulations. But this ection is not applicable to the Common Lodging-house Act of 851 (p. 383).

By s. 38, penalty not above £5 on any person with infectious isorder exposing himself, or on any person in charge of such ifferer causing such exposure, or who, without previous disinfecon, gives, lends, or sells, transmits, or exposes any bedding, othing, rags, or other things which have been exposed to infection om such disorder. Penalty not above £20 on any person who nowingly lets any house or room in which there has been infection, ithout previously obtaining a certificate from a qualified medical ractitioner. This section applies to an innkeeper admitting a uest into an infected part of his house. By s. 42, the 11 & 12 . c. 63, relating to cellar dwellings, is extended to the whole of ngland and Ireland.

By s. 53, where notice has been given by the nuisance authority for the periodical *removal of* manure or other refuse matters from mews, stables, or other premises, whether by public announcement in the locality or otherwise, and subsequent to such notice the person to whom the refuse belongs shall not remove the same, or permit a further accumulation and not continue the periodical removal as appointed, he or they are made liable, without further notice, to a penalty of 20*s.* per day for every day during which such nuisance is permitted to accumulate. But penalty not to apply where the board of guardians or overseers of the poor is the nuisance authority.

Part 4 of the Sanitary Statute of 1866 is occupied with the modifications necessary in its application to Ireland.

The act was amended by 31 & 32 V. c. 115.

By s. 5, the sewer authority within their district to have all the authority vested in the local board, so far as relates to the removal of house refuse from premises, the cleansing of privies, ashpits, and cesspools. Sewer authority to supersede the nuisance authority in all matters over which it acquires powers by this section of the act. Provisions of the Public Health Act of 1848 incorporated with the present act. Earth-closets may be constructed with the approval of the local authority instead of water-closets, s. 7. Sewer authority, local board, or nuisance authority making default in performing sanitary duties, secretary of state may appoint a person to perform the said duties, to be paid by the authority in default, ss. 8, 9.

By s. 10, the sewer authority, or in the metropolis the nuisance authority, to have power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants, as it now has to provide hospitals or temporary places for the reception of the sick under the Sanitary Act of 1866, but such power not to be exercised without the sanction of H. M.'s Privy Council.

Cattle plague is dealt with by 32 & 33 V. c. 70.

By s. 9, every inspector appointed by a local authority, on receiving information of the supposed existence of cattle plague in any place within his district, shall proceed to that place with all practicable speed and discharge the duties and powers conferred by law upon him. Where cattle plague is found to exist, inspector to make an official declaration of the place infected. Cattle may be slaughtered to ascertain nature of the disease. By s. 21, no animal to be moved alive out of any infected place. License to be obtained for removal of hide or flesh of infected animal. Reports to be made to Privy Council from time to time. Provision made for compensation and defraying expense, and for loss. An offence to expose for sale infected cattle or sheep. Privy Council to make orders for mode of disinfecting.

III. THE PUBLIC HEALTH ACT, 1872.

The above-mentioned act (35 & 36 V. c. 79) does not apply to Scotland or Ireland, or to the metropolis, except so far as in the act expressly provided. The act is a very long one, and space forbids a lengthy notice being taken of it here. The act itself should be referred to if it is desired to become properly acquainted with its scope and meaning.

England is divided by the act into urban and rural sanitary districts respectively, subject to the jurisdiction of the urban and rural sanitary authorities.

The urban authorities are the town council in boroughs, and the improvement commissioners in an Improvement Act district, and the local board in a local government district. The rural sanitary authorities are the guardians of any union not coincident in or with an urban district. All powers, &c., exercisable by a local board, the sewer and nuisance authority, and the local authority under the lodging-house and artizans' dwellings acts, have been transferred to the sanitary authority, to the exclusion of other authorities. The sanitary authority can appoint a legally qualified medical practitioner officer of health.

Any rural sanitary authority is given power to appoint a committee of its own members, one-third being ex-officio guardians if there is an adequate number of them, if not, the numbers deficient to be made up by elected guardians. Such committee is to stand in the position of the rural authority.

Inspectors of the local government board may attend any meetings of local boards, or rural sanitary authorities, when and as directed by the local government board, and such inspectors shall, for the purposes of any inquiry directed by the local government board, in relation to witnesses and their examination, the production of papers and accounts, the inspection of places and matters required to be inspected, have for the purposes of the sanitary acts similar powers to those which poor law inspectors have under the acts relating to the poor law for the purposes of those acts.

The act directs the mode in which the expenses of the sanitary authorities are to be provided for. The local government board can permanently constitute any sanitary authority, whose district forms part of or abuts upon any seaport, the sanitary authority of such port. The act also defines the powers of the local government board as to the formation of united districts, and otherwise.

IV. PREVENTION OF DISEASES, VACCINATION.

By *infectious* disease is generally understood one that is communicated to others through the medium of the atmosphere; by

contagious disease, one that infects by touch or actual contact of individuals; by *endemic* disease is meant one that is not general but peculiar to a particular county, place, or locality; and by *epidemic* disease one that is not local, or peculiar to any individuals or class, but general alike to all, like a plague or pestilence. Repeated visitations of late years of disorders assumed by many to be of a local character have been productive of statutes for eradicating the causes of such maladies, or limiting their range and frequency, by the creation of boards of health, the compulsory removal of nuisances, and the other precautionary expedients stated in the previous section.

In a prosecution instituted for conveying a child infested with the small-pox along the public highway, Mr. Justice Le Blanc said "that there could be no doubt, in point of law, that if a person unlawfully, injuriously, and with full knowledge of the fact, exposed in a public highway a person infected with a contagious disorder, it was a common nuisance to all the subjects, and indictable as such. No person having a disorder of this description upon him ought to be publicly exposed, to the endangering the health and lives of the rest of the community." *Rex* v. *Vantandillo*, 4 *M. & S.* 7.

By 30 & 31 V. c. 84, former acts on vaccination are repealed. Guardians of parishes may alter or divide vaccination districts, or consolidate them, subject to approval of poor law board. If the board do not approve, another scheme to be proposed, and when approved guardians to contract for performance of vaccination. Qualification of vaccinator to be prescribed by Lords of the Privy Council, and other regulations to be prescribed by them in relation to the supply of vaccine lymph. Allowance to vaccinators to be proportioned to the number and quality of the vaccinations performed. In addition to payments made by guardians and overseers, the Lords of the Privy Council may direct an extra payment at a rate not exceeding 1*s.* for each child successfully vaccinated. By s. 8, provision is made for revaccination. No public vaccinator to be paid for vaccination out of his district. Parent or other person having custody of child to procure vaccination within three months after birth of the child. Parents to transmit certificate of successful vaccination by medical practitioner to registrar of the district. Vaccination declared not to be parochial relief so as to disqualify. Penalty on parent of 20*s.* in not procuring the vaccination of his child.

The Vaccination Act, 1871 (34 & 35 V. c. 98), makes sundry new provisions on this subject. The guardians of every union and parish are to appoint and pay one or more "vaccination officers" to prosecute persons charged with offences against the Vaccination Acts, and otherwise to enforce the provisions of the acts. Such officers are to perform all the duties imposed by the Vaccination Act of 1867, 30 & 31 V. c. 84, on the registrar of births and deaths.

V. NUISANCES IN THE METROPOLIS.

By 57 G. 3, c. xxix (local and personal), nuisances from throwing ashes, dust, dirt, rubbish, or any other *filth whatever*, in streets, is prohibited, on penalty of not less than 40*s*., nor more than £5, for each offence, s. 64. The like penalty is inflicted for annoyances from show-boards, baskets, stalls, wares, and *other matters:* and in case of any renewal of the nuisance after notice, all such articles may be seized and sold, s. 65. Hog-sties, slaughter-houses, and *any other matter*, which in the judgment of the commissioners is a nuisance to the other inhabitants, are, on complaint of any inhabitant, and due investigation, to be removed after seven days' notice, under a penalty of £10 for every neglect; and the party may be indicted, and the nuisance abated, as in the case of public or common nuisances, s. 67. No *swine* to be kept, or suffered to wander in the streets, ss. 68, 69. Certain *offensive* slops are to be removed in covered carts, on pain of £5, s. 73.

The 2 & 3 V. c. 47, subjects to a penalty not exceeding 40*s*. every person who, in any thoroughfare within the metropolitan district, shall burn, dress, or cleanse any cask or tub; screen any lime; throw or lay rubbish; beat carpet, rug, or mat (except door-mats, before eight in the morning); empty privy (except between welve at night and six in the morning); keep a pig-sty in the front f any street or road in the town; not sweep footways and water-urses adjoining premises; expose articles for sale in any public rden or park without owner's consent; or leave open any vault cellar; or not sufficiently fence any area, pit, or sewer.

In the Metropolis, by 7 & 8 V. c. 84, buildings are prohibited to erected nearer than 50 feet to manufactories dangerous in respect ire or explosion, in consequence of the manufacture of gun-der, ignitable matches, vitriol, fireworks, turpentine, naphtha,

The erecting of dwellings near to, or the carrying on certain sive or noxious businesses, as blood-boiler, bone-boiler, soap-r, tallow-melter, fellmonger, slaughterer of cattle, and tripe-r, are also placed under restriction.

2 & 3 V. c. 71, the magistrates within the metropolitan police ct may, on the complaint of the guardians or overseers of the rder any house or part thereof represented to be in a filthy nwholesome condition to be cleansed at the expense of the if he neglect to do so within seven days.

sewers of the Metropolis are now placed under the juris-of the Metropolitan Board of Works, established by V. c. 120, and various amending acts.

VI. METROPOLITAN BURIALS AND CEMETERIES.

ct of 1852, the 15 & 16 V. c. 85, relative to these subjects, nds in its local limits the cities of London and West-

minster, the borough of Southwark, with the parishes of Woolwich, Greenwich, Hammersmith, Fulham, Putney, and other specified suburban parishes and townships, forming the burial districts of the metropolis. By s. 1, the act of 1850 is repealed. On the representation of a secretary of state, an order in council may direct burials in any part of the metropolis; but the order is not to extend to the burial-grounds of Jews or Quakers, nor to non-parochial grounds of private persons unless expressly mentioned, and the right of burying in vaults is saved. Any person assisting in any way at the burial of any dead body in a ground declared closed by order in council is punishable for a misdemeanour, and where the parish burial-ground has been closed, the body of a parishioner shall not be buried in any other burial-ground in the metropolis, except where some relative has been buried, and at the express wish of some surviving relatives. The provisions of the act not to extend to the Kensal Green Cemetery, the South Metropolitan Cemetery, the cemeteries of the London Cemetery Company, of the West of London and Westminster Company, the Victoria Park Cemetery, the Abney Park Cemetery, and the cemetery for the parishes of St. Dunstan, Stepney, and St. Leonard, Bromley. By s. 9, no new burial-ground is to be used in the metropolis, or within two miles of any part thereof, without the previous approval of the secretary of state. On the requisition of ten or more ratepayers, the churchwardens of any parish may convene a vestry meeting, which may determine whether a burial-ground shall be provided for the parish; and if the meeting decide in the affirmative, the vestry is to appoint a "burial board," and proper officers, and the board will have power to purchase and lay out ground, and to borrow money with approval of the Treasury. The Public Works Loan Commissioners are authorized to advance money for the purposes of the act; the money raised and the income arising from the burial-ground, except the fees payable to the incumbent, sexton, &c., to be applied towards defraying the expenses. Several vestries may combine to purchase a burial-ground for the common use of the respective parishes, and the burial boards are to be corporate bodies. By ss. 25–39, every burial board is to provide with all convenient despatch a burial-ground for the parish or parishes for which it acts, which may be within or without the limits of such parishes, but to have regard to the convenience of access to them; but no ground, not already appropriated as a burial-ground, to be used as such under this act nearer than two hundred yards to a dwelling-house, without the consent of the owner and occupier; but the board may purchase lands for its purposes from a cemetery company, and may sell any part of the land not required; or with the consent of the vestry appropriate land belonging to the parish, under such conditions as the Court of Chancery may direct. The burial board is to lay out the burial-ground in a fitting manner, a part to remain unconsecrated, and

to provide chapels for the performance of the funeral service of the Church of England, and for Dissenters; the board may contract for works to be done; the burial-ground is to be that of the parishes for which it has been provided, and all rights are to apply to it which pertained to the previous burial-grounds of such parishes; the board also may sell exclusive rights to burial vaults, and the liberty to erect monuments; and may fix a scale of fees for interments. Where fees are now applicable to stipends of ministers or other parochial purposes, they are to continue to be applied to that purpose, but the vestry is to have power, with consent of the bishop, to revise fees to incumbent, and to substitute a fixed payment. The general management is to be vested in the burial boards. Arrangements to be made between incumbents, to be confirmed by the bishop, for the employment and payment of a chaplain to perform the duties for united parishes. By s. 41, the burial board is empowered to make arrangements for facilitating the conveyance of bodies to the burial-ground, and to provide places for the reception of bodies until interment. The commissioners of sewers for the city of London, after being authorized by the common council, are to act as a burial board for the city and liberties thereof. The secretary of state is empowered to make such regulations for the burial-grounds, and for places for the reception of dead bodies previous to interment, as may seem proper. The Treasury is authorized to advance money for the purchase of the Brompton Cemetery, and after the purchase is completed, the West of London and Westminster Cemetery Company is to be wound up. The Brompton Cemetery may be sold by the Treasury, and until it is sold may be used for interments. By s. 49, the compensation fee to incumbents on the burial of a pauper is limited to 2*s.* 6*d.*, but where the burial fees are payable to churchwardens, the incumbents are not to be entitled, but they are to continue payable as before. Incumbent or churchwardens are empowered, by s. 51, to convey any chapel used in a burial-ground in which interments are discontinued, on such trusts as may be approved of by the vestry.

VII. BURIALS BEYOND THE METROPOLITAN LIMITS.

By 16 and 17 V. c. 134, the act in the preceding section is amended, and further provisions made relative to burials in England beyond the limits of that act. By s. 1, on representation of a secretary of state, an order in council may, for the protection of the public health, restrain the opening of new burial-grounds in any city or town, or within other limits; or may order, wholly or partly, the discontinuance of burials in places specified in such order. Order not to extend to the burial-grounds of Quakers or Jews, unless expressly included, s. 2. Rights to bury in vaults,

&c., saved by s. 4. Act not to extend to cemeteries established by act of parliament, or new burial-grounds approved by secretary of state. Certain provisions of former act, from s. 10 to s. 42, both inclusive, made applicable to any parish not within the metropolis. By s. 7, any burial board erecting a chapel for burials according to the rites of the Church of England, required also to erect a chapel for persons not being members of that church.

These acts are amended in relation to fees payable to incumbents and churchwardens by 20 & 21 V. c. 85.

By 20 & 21 V. c. 81, the approval of a majority of the vestries of parishes is sufficient for acts done by burial boards. Joint burial boards may be dissolved. Burial boards may provide more than one burial-ground. Local board of health may, by order in council, be constituted a burial board. Burial board may be established for a district not maintaining its own poor, and which has had no separate burial-ground. No wall or fence required between the consecrated and unconsecrated portions of burial-ground; boundary marks of stone or iron to be sufficient.

In some parishes, partly or wholly within boroughs, it has been difficult to find the requisite places of interment for the inhabitants under 16 and 17 V. c. 134. Consequently, under 17 & 18 V. c. 87, upon the petition of the borough council, the crown, by order, may invest such council with the power of providing burial-grounds. Upon such order, borough council to have all the powers vested in burial boards, under 16 and 17 V. c. 134. Expenses to be paid out of borough funds or rates. Money may be borrowed at a lower rate of interest to pay off securities bearing a higher rate. Council may fix a higher rate of payment for interment in the outlying part of any parish, partly situate within the borough. Order of crown may except parishes already having burial-grounds; and in such cases, if a rate be necessary, a separate rate to be made on the rest of the borough. Powers of vestry, with consent of bishop, of fixing and revising the fees payable to incumbents, clerk, and sexton, are transferred to the borough council, s. 10. Council may appropriate land belonging to the borough. Burial-ground not to be within 100 yards of a dwelling-house.

By 22 V. c. 1, where persons having care of any vault or place of burial neglect to comply with order in council in making alterations essential to public health, the churchwardens may act in their stead, and obstructing them is a misdemeanour. Expenses incurred in such alteration to be defrayed out of the poor rates.

See further, 23 & 24 V. c. 64; 25 & 26 V. c. 100.

VIII. QUARANTINE REGULATIONS.

A regulation of doubtful efficacy has long been relied upon for the preservation of the public health, and for preventing the com-

munication of diseases from abroad, namely, the performance of *quarantine;* that is, not allowing either the persons or goods on board any vessel coming from places where any dangerous, contagious, or infectious disease prevails, to land at their destination till forty days, or other determinate period, has expired. By the 6 G. 4, c. 78, places are to be appointed by proclamation, for the performance of quarantine; or the privy council may order vessels to repair to certain places to be examined, without being liable to quarantine. Masters of vessels liable to quarantine are to hoist the yellow flag on meeting other vessels at sea, or being within two leagues of the United Kingdom, on penalty of £100. Masters refusing to answer interrogatories made to ascertain the state of their vessels, to forfeit £200; or omitting to disclose that they have touched at any infected place, forfeit £300; or refusing to convey their vessels to the place appointed for quarantine, or quitting them, or permitting any other person to quit them, forfeit £400. Persons arriving in any infected vessel, or going on board and quitting it before discharged from quarantine, to suffer six months' imprisonment and forfeit £300. Persons forging or uttering false certificates required by order in council to be guilty of felony.

By 29 & 30 V. c. 90, s. 51, the above penalties may be reduced by the justices or court having jurisdiction; and s. 52 contains a description of vessels within the powers of 6 G. 4, c. 78.

IX. SALE OF UNWHOLESOME PROVISIONS.

By the 26 & 27 V. c. 117, the sanitary inspector may at reasonable times examine any animal, carcase, meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, or flour exposed for sale, or deposited for that purpose, and intended for human food, the negative proof resting with the party charged, and in case any such articles appear unfit for food he may seize them. Upon proof, a justice may order the said articles to be destroyed, and the party exposing them for sale or having them in possession may, on conviction, be liable to a penalty not exceeding £20 for any animal, carcase, or fish, piece of meat, parcel of fruit, vegetables, corn, bread, game, or poultry so found, or in lieu of a fine imprisonment for three months may be awarded. Obstructing inspector a penalty not exceeding £5.

X. BETTER DWELLINGS FOR ARTISANS AND LABOURERS.

An Act of some importance, if judiciously carried out, 31 & 32 V. c. 130, was passed at the close of the parliamentary session of 1868, and extends to the United Kingdom. Its general purpose is to make provision for taking down or improving dwellings occupied by working men and their families, which are unfit for human habitation, and for the building and maintenance instead of better

dwellings for such persons. If in any place to which the act applies there is no officer of health, the local authority, with the approval of a secretary of state, may appoint such officer, whose duties will be to report premises in a condition dangerous to health, or unfit for human habitation, to the local authority.

By s. 12, whenever four or more householders living in or near to any street, by writing under their hands, represent to the officer of health that in or near to that street any premises are in a condition or state dangerous to health, so as to be unfit for human habitation, he is forthwith to inspect the premises and report thereon. If local authority neglect to enforce the act, the secretary of state may compel it to proceed, s. 13. Act extends to the United Kingdom, with modifications in its application to Scotland and Ireland.

CHAPTER XI.

Offences Against Public Order and Police.

I. CLANDESTINE MARRIAGE.

THE law having provided for the religious or public solemnization of marriage, it is an offence to celebrate the ceremony in a *clandestine manner*, and may be included among the number of offences against public order and police, by not partaking of that notoriety essential to its due celebration, and the knowledge of parties interested in the event.

By 6 & 7 W. 4, c. 85, persons unduly and knowingly solemnizing marriages in any other but a church or chapel of the establishment, or registered building, or in absence of registrar, or in less time than act prescribes (except by special license), are guilty of felony. But prosecutions are to be commenced within three years. If any person knowingly intermarry in any other than the place specified in the notice and certificate, or without notice to the superintendent, or due certificate of notice, or without license when necessary, or in the absence of a registrar or superintendent where his presence is required, the marriage is void.

Where a *valid* marriage is had by wilfully false notice, &c., the offending party forfeits all interest in property accruing by the marriage.

Persons wilfully making false declaration, or signing false notices or certificate, or forbidding the issue of a certificate by false representation, are liable to the penalties of perjury.

Clandestine marriages are punishable at common law, independent of the Marriage Act, with fine and imprisonment.

II. BIGAMY.

Bigamy or polygamy is where a man marries a plurality of wives, or a woman a plurality of husbands.

By 24 & 25 V. c. 100, s. 57, if any person, being married, shall marry any other person during the life of the former husband or wife, whether the second marriage shall have taken place in England, Ireland, or elsewhere, every such offender shall be guilty of *felony*, subject to penal servitude for not exceeding seven, nor less than three years, or imprisonment, with or without hard labour, not exceeding two years. But not to extend to any second marriage contracted out of England or Ireland, by any other than a subject of her Majesty; or to any person marrying a second time, whose husband or wife shall have been continually absent for *seven years*, and not having been known to be living within that time; or to any person who, at the time of such second marriage shall have been divorced; or to any person whose former marriage shall have been declared void by the sentence of a court of competent jurisdiction.

III. GAMES, WAGERS, LOTTERIES.

Gaming, or speculating on the chances of winning or losing money by any play, game, or diversion, is an offence not punishable at common law, unless it is so practised as to be injurious to public order and economy; but, by statute, the legislature has, in many instances, laid it under particular restraints.

By 8 & 9 V. c. 109, such part of the 33 H. 8, c. 9, is repealed, as imposes penalties for games of skill, such as bowls, tennis, and quoits, and for lacking bows and arrows, or for not maintaining butts; for mayors, sheriffs, and constables, not searching for places where dicing, carding, or gaming shall be suspected to be carried on; and also for that part which allows gentlemen and noblemen to license their servants to play at cards, dice, or any unlawful game.

In default of other evidence proving any house or place to be a *common gaming-house*, it is sufficient in support of the allegation in any indictment or information that any place is a common gaming-house, to prove that such place is kept or used for playing therein, at any *unlawful game*, and that a bank is kept there by one or more of the players, exclusively of the others, or that the chances of any game played therein are not alike favourable to all the players, including among the players the banker or other person by whom the game is managed, or against whom the other players stake, play, or bet; every such place is deemed a common gaming-house, contrary to the law and the act of Henry 8, and by all other acts against unlawful games or gaming-houses.

The power of the justices may be exercised by warrant, and on conviction before any two justices, either by evidence or their own confession, any owner or keeper of a common gaming-house may be fined in the sum of not above £100, or imprisonment of not more than six months, with or without hard labour, at the discretion of the justices; in case of the penalty not being paid a distress may be levied: if thought proper, the keeper of the gaming-house may still be proceeded against by indictment, but not for the same offence, if punished summarily; nor is it necessary under this act to prove that any person found playing at any game was playing for money, wager, or stake

The commissioners of police may authorize the superintendent or constables to enter gaming-houses, to seize all instruments of gaming and all moneys, and to take into custody all persons found therein; they may also search all parts of the house for instruments of gaming.

Where any cards, dice, balls, counters, tables, or other instruments of gaming used in playing any unlawful game, shall be found in any house, room, or place suspected to be used as a common gaming-house, and entered under a warrant or order, or about the person of any of those who shall be found therein, it shall be evidence, until the contrary be made to appear, that such place is used as a *common gaming-house*, and that the persons found in the place where such have been discovered were playing therein, although no play was actually going on in the presence of the constable entering the same: such tables and instruments of gaming being forthwith destroyed. Witnesses are indemnified for all gaming transactions previous to the time of their giving evidence.

Justices at the general annual licensing meeting may grant licenses, if they think fit, to the keepers of inns, public-houses, or beer shops, for billiard-tables, bagatelle-boards, or instruments used in any game of a like kind; a notice of such license to be publicly displayed: the neglect of which, or for being unlicensed, subjects them to be proceeded against as common gaming-houses, and also to a penalty of £10 for every day in which such games are played, or imprisonment, with or without hard labour, for any time not exceeding a month; with a distress on the goods if the fine is not paid.

No person, whether he be a licensed victualler, or hold a license under this act, to allow of any play after one or before eight on any day, or at any time on Sundays, Christmas day, or Good Friday, or on fast or thanksgiving days, under the penalties imposed for being unlicensed; and any licensed victualler allowing of any play at any time when such premises are not allowed to be open for the sale of wine, spirits, or beer, to be deemed liable to the same penalties as if unlicensed. Constables and officers of police empowered to enter any licensed house when they think

proper ; obstructions to them held contrary to tenor of license, and punishable accordingly.

By s. 23, no prosecutions under this act legal unless notice is given to the party at least one month before, nor unless the action be brought within three months from the date of the offence. By s. 17, if any person, by CHEATING at cards, dice, or the holding of stakes, or in wagering on the event of any game, sport, or pastime, win any sum of money, such person shall be deemed to have obtained money under *false pretences*, and be punishable accordingly.

By s. 18, all contracts, whether by parol or in writing, by way of gaming or WAGERING, made null and void, and not recoverable in any court of law or equity; but this clause not to apply to any subscription or agreement towards any plate or prize to be awarded to the winner in any lawful game or pastime.

The provisions of 8 & 9 V. c. 109, were partly frustrated by the keepers of gaming-houses fortifying the entrances to their houses, by which time was afforded to the gamblers to conceal or destroy the cards, dice, balls, or other instruments of gaming, so that the officers who visited such houses were unable to produce the needful evidence of a gaming-house. To remedy such defect of testimony, the 17 & 18 V. c. 38, was passed, and provides that any person who shall obstruct or delay the entrance of a constable or other officer, by any bolt, bar, chain, or other contrivance, shall be liable, on summary conviction, to any penalty not exceeding £100 ; or on non-payment, with costs, may be committed to prison, with or without hard labour, for any period not exceeding six calendar months. Obstructing the entrance of a constable to be evidence of a house being a common gaming-house, s. 2. Persons arrested refusing to give their names and addresses, or giving false names or addresses, liable to a penalty not above £50. The keeper of a common gaming-house liable, on conviction, to a penalty not above £500 ; or on non-payment, with costs, may be imprisoned for twelve calendar months, with or without hard labour, ss. 3, 4. Justices may require of the persons apprehended to give evidence on oath, and on their refusal may be punished for contempt. Persons required to be examined as witnesses, and making a full discovery, to be freed from all penalties, s. 6. Penalties and costs may be levied by distress. Half the penalties to go to an informer, the remainder to the poor of the parish.

By 9 & 10 W. 3, c. 17, all lotteries are declared public nuisances ; and by 42 G. 2, c. 119, if any person shall keep any office or place for lotteries, called *little goes*, or any other lottery, or shall knowingly suffer it to be exercised or played at in his house, he shall forfeit £500. All state lotteries were discontinued after the 4 G. 4, c. 60, which was the last state lottery sanctioned by parliament.

By 6 & 7 W. 4, c. 66, if any person print or publish, or cause to be so done, any advertisement of any *foreign* or *other* lottery, not authorized by parliament, or any advertisement of the sale of

any ticket, share, or chance in such lottery, he shall forfeit £50, to be recovered with *full costs* of suit in Westminster, Dublin, or Edinburgh; half to the Queen, half to the informer or prosecutor. But by 8 & 9 V. c. 74, any such action for forfeiture or penalty must be instituted by the law officers of the crown in England, Scotland, or Ireland.

By several statutes of the reign of G. 2, all private lotteries by tickets, cards, or dice, and particularly the game of faro, basset, hazard, roulette, and other games with dice, except backgammon, are prohibited, under a penalty of £200 by him that erects such lotteries, and £50 a time for the player. All raffles and other devices under the denomination of sales, which are equivalent to lotteries, are prohibited, under heavy penalty, by a great variety of statutes.

By 8 G. 1, c. 2, persons setting up offices for sale of houses, lands, goods, or other things by way of lottery forfeit £500. Persons selling or delivering tickets in any foreign lottery forfeit £200.

By 5 G. 4, c. 83, all persons *playing* or *betting* in any *open* or *public* place, with any table or instrument of gaming, at any game or pretended game of chance, may be treated as vagrants.

Under 2 & 3 V. c. 47, within the metropolis limits the police are empowered, on the complaint of two householders on oath, forcibly to enter any *gaming-house*, destroy the tables and instruments of gaming, seize all moneys and securities, and take all present into custody; and the managers of the house are liable to a penalty of £100, or six months' imprisonment, at the discretion of the magistrates, and others present to a penalty of £5. Proof of gaming for *money* not necessary to support an information.

IV. SUPPRESSION OF BETTING-HOUSES.

An extensive species of gaming having sprung up in houses of this description tending to the injury and demoralization of improvident persons, by the occupiers receiving money in advance, on promise to pay money, on events of horse-races, and like contingencies, the 16 & 17 V. c. 119, provides for their suppression. Under this act, no house or office is to be kept or used for any such purpose, or for any assurance, promise, or agreement, expressed or implied, to pay or give any money or valuable thing on the event of any horse-race, fight, game, sport, or exercise; every house, office, room, or other place opened, kept, or used for such purposes, declared to be a *common nuisance and common gaming-house*, within the meaning of the 8 & 9 V. c. 109 (p 675). Penalty on owner or occupier, on conviction before two justices, a sum not exceeding £100, with costs, or, on non-payment, to be committed to the house of correction, with or without hard labour,

for six calendar months. Penalty on any owner or occupier of such house, office, &c., or any person having the care or management thereof, or of conducting the business of such places, or receiving money or other valuable pertaining to the aforesaid contingencies, £50, with costs, or, on non-payment, three months' imprisonment, with or without hard labour, s. 4. Money so received, on a deposit or bet, may be recovered with full costs of suit in any court of competent jurisdiction. Penalty on persons exhibiting placards, or publishing or advertising any card, writing, or sign, or *inviting* persons to resort to such betting-houses, £30 and costs, or two months' imprisonment, s. 7. Penalties may be recovered by distress, or, in case of commitment for penalty and costs, the costs only may be levied by distress. One-half of every pecuniary penalty to be paid to the informer, and the other half to the poor of the parish.

By s. 11, justices may order the search of suspected houses, and the metropolitan police may enter and search suspected houses. One month's notice to prosecute must be given, and the prosecution commenced within three calendar months after the offence. Act extends to England and Ireland, not to Scotland.

CHAPTER XII.

Homicide.

HAVING in the preceding chapters considered those offences which either affect the government or the interests of religion, commerce and trade, or public order, health, and police, we come next to consider those which are directed against the persons, habitations, and property of individuals.

Of crime injurious to the person, the principal is Homicide, which is the killing of a human being; and is either *justifiable*, *excusable*, or *felonious*. The first has no tinge of guilt; the second, very little; but the third is the greatest crime that man is capable of committing against a fellow-creature.

1. JUSTIFIABLE homicide, which it appears almost inconsistent to include in criminal delinquencies, is of divers kinds, including such as arise from unavoidable necessity or accident, without any imputation of blame or negligence in the party killing. Of this kind is homicide committed in the pursuit of justice, in the execution of any civil or criminal procedure; but in these cases the necessity must be real and apparent, as that the offender could not be arrested, or the riot suppressed, or the property stolen retaken, unless homicide had been committed.

Homicide is justifiable, committed in the prevention of any atrocious crime, as an attempt to murder, or to commit other capital offence. A woman is justifiable in killing one who attempts to ravish her; and so, too, the husband or father may justify killing a man who attempts a rape on his wife or daughter; but not if he take them together by *consent*, for the one is *forcible* and *felonious*, not the other. Attempting a crime still more abominable may be resisted even, if necessary, by killing the unnatural aggressor.

Justifiable homicide reaches not to crimes unaccompanied with *violence*, as the picking of pockets, or attempting to break open a house in the *daytime*, without an attempt at robbery. The general principle of the law appears to be this; that where a crime, in itself *capital*, is endeavoured to be committed by *force*, it is lawful to repel that force by the death of the party attempting it; but to kill a person in resisting a trespass or misdemeanour, would be clearly manslaughter or murder.

2. EXCUSABLE homicide is committed either by *misadventure* or in *self-defence*. Homicide by *misadventure* is where a man, doing a lawful act, without any intention to hurt, unfortunately kills another; as where a man is at work with a hatchet, and the head flies off and kills a bystander; for the act is lawful, and the effect is accidental. So where a parent is moderately correcting a child, a master his apprentice or scholar, or an officer punishing a criminal, and death ensues, it is only misadventure; but, if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and occasion death, it is manslaughter at least, and may be murder; for the act of immoderate correction is unlawful.

As prize-fighting and sword-playing are *illegal*, if either of the parties be killed, such killing is felony, or manslaughter. And, in general, if death ensue from any idle, dangerous, and unlawful sport, the slayer is guilty of manslaughter.

There seems to be a solid distinction between boxing and fencing, which was adverted to in the case of *Hunt* v. *Bell*, 1 Bing. 1. To teach and learn to box and fence are equally lawful, they are both the art of self-defence; but sparring exhibitions are unlawful, because they tend to form prize-fighters, and prize-fighting is illegal.

Homicide in *self-defence*, from a sudden affray or quarrel, is rather excusable than justifiable in the English law. To excuse this species of homicide, it must appear that the slayer had no probable means by fleeing or otherwise to escape from his assailant.

Formerly no man was held entirely free from guilt who took away the life of another without permission of the law; and it is said that both justifiable and excusable homicide were anciently punished by fine or forfeiture. But now it is provided that no punishment or forfeiture shall be incurred by any person who shall kill another by absolute misfortune or in defence of his own life.

3. FELONIOUS homicide is the killing of a human creature with-

out justification or excuse, and is either *murder*, *manslaughter*, or *self-destruction*.

I. MURDER.

Murder is defined, or rather described, by Sir Edward Coke, to be, "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the King's peace, with malice *aforethought*, either expressed or implied."

Malice *aforethought*, by which is meant premeditated hatred of the deceased, or destructive intention, is the great criterion by which murder is distinguished from every other kind of homicide, and may be either *expressed* or *implied*. *Expressed* malice is that deliberate intention to take away the life of another which is manifested by external signs, by lying in wait, menaces, former grudges, or concerted schemes to do him personal harm This description takes in the place of DUELLING. If one kill another in a *deliberate* duel, under provocation of charges against his character, however grievous, it is murder in him and his second, and also in the second of the deceased; and the bare incitement to fight, though under such provocation, is a high misdemeanour, *Rex* v. *Rice*, 3 R. E. 581. If two or more come together to do an *unlawful* act, of which the probable consequence may be bloodshed; as to maltreat a person, commit a riot, or to rob a house, and one of them kill a man, it is murder in them all, because of the unlawful act, the concerted evil intended aforethought.

Implied malice is that inference which arises from the nature of the act, though no direct malice can be proved; as where a man deliberately poisons another, the law presumes malice, though no particular enmity can be established. So, too, in a *deliberate* duel, it is no answer to a charge of murder, as Justice Patteson told the jury in *King* v. *Jeffcott*, to say that it was done solely to vindicate reputation; if time has intervened for reflection, malice will be inferred, though no evidence is adduced of particular ill-will towards the deceased. Again, if a master refuse his apprentice necessary food, or treat him with such continued harshness and severity that his death is occasioned thereby, the law will imply malice, and the offence will be murder, *Leach*, 127. So, if a prisoner die by the cruelty and neglect of the gaoler, the party offending is criminal in the same degree.

If a man kill another suddenly, without a considerable provocation, the law implies malice. But if the person provoked had unfortunately killed the other by beating him in such a way as showed only an intent to *chastise* and not to kill him, the law so far considers the provocation of contumelious behaviour as to adjudge it only manslaughter, and not murder.

If one, intending to commit a felony, undesignedly kill a man, it is murder. So, if a person give a woman with child a potion to

procure abortion, and it operate so violently as to kill the mother, this is murder in the person who gave it.

If two persons incite each other to commit self-murder together, and the means employed to procure death take effect upon one only, it is murder to the survivor. *Reg.* v. *Allison*, 8 *C.* & *P.* 418.

Although a bare *attempt to kill* is generally only a misdemeanour, yet an attempt to kill by certain means is felonious. Thus, by 24 & 25 V. c. 100, s. 11, to give, or cause to be given, poison, or other destructive thing, to any person, or by any means to cause an injury dangerous to life, with *intent* to commit murder, may be punished by penal servitude for life.

By s. 4, all persons who shall *conspire, confederate, or agree* to murder *any person*, whether he be a subject of her Majesty or not, and whether or not he be within the Queen's dominions; and whoever shall solicit, encourage, or persuade, or propose to any person to murder another, whether a subject or not, is liable to penal servitude for not above ten, nor less than three years, or to imprisonment not exceeding two years, with or without hard labour.

Every person convicted of murder, or of being accessory thereto, is punishable with *death*. Rescuing, or attempting to rescue, a murderer, subjects to penal servitude for life, or not less than fifteen years, or to imprisonment for not exceeding three years, with or without hard labour or solitary confinement. Attempting to rescue the body of a murderer, after execution, is punishable by penal servitude for four years.

As to the time of execution, it is not requisite the punishment should be carried into effect the next day but one after sentence passed; but the judges have, by 6 & 7 W. 4, c. 36, the same authority in convictions for murder as in other capital offences: an alteration introduced to preserve from irrevocable punishment persons who may have been convicted on erroneous or perjured evidence. Hanging in *chains* or dissection prohibited by 4 & 5 W. 4, c. 26, and burial within the precincts of the prison substituted.

II. MANSLAUGHTER

Is defined the unlawful killing of another, upon a sudden heat of passion, without previous malice expressed or implied.

If, upon a sudden quarrel, two persons fight, and one kill the other, it is manslaughter; and so it is if they, upon such an occasion, go out and fight in a field, for this is one continued act of passion. So, also, if a man be greatly provoked, as by pulling his nose, or by taking another in the act of adultery with his wife, and immediately kill the aggressor, it is only manslaughter. But in

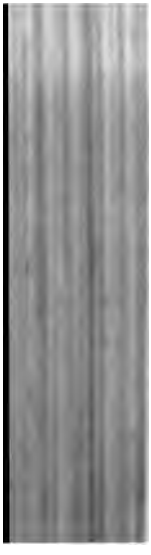
every case of homicide upon *provocation*, if there be a sufficient cooling time for passion to subside, and reason to interpose, and the person so provoked afterwards kill the other, this is deliberate revenge, and amounts to murder.

Manslaughter may also arise when, in the commission of some *unlawful* act, death ensues. As, if two persons play at sword and buckler, which is an unlawful game, and one kill the other, it is manslaughter.

So, when a person does an act lawful in itself, but in an unlawful manner, without due caution and circumspection, as, when a workman flings down a stone, or piece of timber into the street, and kills a man, this may be either excusable homicide, manslaughter, or murder, according to the circumstances under which the original act was done. If it were in a country village, where few passengers are, and he called out to all people to have a care, it is a misadventure only; but if it were in London, or other populous towns, where people are continually passing, it is manslaughter, although he gave loud warning; and murder, if he knew they were passing and gave no warning at all to them, being malice to all mankind.

The distinction between *murder* and *manslaughter* will be illustrated by the case of Francis Smith, who was indicted for murder at the Old Bailey, Jan. 13, 1804. The neighbourhood of Hammersmith had been alarmed by what was supposed to be a ghost. The prisoner went out with a loaded gun, with intent to apprehend the person who personated the ghost; he met the deceased, who was dressed in white, and immediately discharged his gun and killed him. Chief Baron Macdonald, Mr. Justice Rooke, and Mr. Justice Lawrence were unanimously of opinion that the facts amounted to the crime of murder. For the person who represented the ghost was only guilty of a *misdemeanour*, and no one would have had a right to have killed him, even if he could not otherwise have been taken. The jury brought in a verdict of manslaughter, but the court said they would not receive that verdict; if the jury believed the witnesses, the prisoner was guilty of murder; if they did not believe them, they must acquit. Upon this the jury found a verdict of guilty. Sentence of death was pronounced, but the prisoner was reprieved.

The cases adduced by Mr. Justice Foster have been cited (iv. *Criminal Law Report*, 25) as apt illustrations of the higher and lower degrees of homicide. "A person driving a cart or carriage happeneth to kill. If he saw, or had any timely notice of the mischief likely to ensue, and yet drives on, it will be *murder*, for it was wilfully and deliberately done. Here is the heart regardless of social duty which I have already taken notice of. If he might have seen the danger and did not look before him, it will be *manslaughter*, for want of due circumspection. But if the accident happened in such a manner that no want of care could be imputed



[illegible]

[illegible] by the old rule of [illegible] within a year after the [illegible]

By 24 & 25 V. c. 100, s. 9, murder or manslaughter, whether within or without the [illegible] if committed by a British subject, is liable to [illegible]ment: and the offender may be apprehended, [illegible]ecuted in any part of England or Ireland in which [illegible] resides. Under this act, by the consent [illegible] of the offence and of the person, with the [illegible]ence, both in this and the next chapter, are tried.

For the more speedy trial of military homicide [illegible] Mutiny Act, guilty of the murder or manslaughter under the said act, in any part of England or [illegible] jurisdiction of the Central Criminal Court, such [illegible] 26 V. c. 65, are made liable to be indicted and [illegible] tral Criminal Court: or if in Ireland, either the [illegible] Dublin, by a commission. The Queen's Bench [illegible] order a homicide to be tried.

III. SELF-DESTRUCTION.

A *suicide* is one that deliberately puts an end to [illegible] or commits any act the consequence of which is [illegible] is considered in law a felony committed by a re-

made within twenty-four hours from the finding of the inquisition, and take place between the hours of nine and twelve at night.

The usual practice of juries, in cases of self-murder, is to bring in a verdict of *insanity*; judging, probably, that the act of self-destruction is such a strange anomaly in human conduct, such a wide aberration from the principle of self-preservation, which universally actuates sentient beings, as to form of itself unequivocal testimony of deranged or maddened intellect.

CHAPTER XIII.

Offences against the Persons of Individuals.

I. RAPE.

RAPE is the offence of having carnal knowledge of a woman by force, against her will, and is punishable by penal servitude for life, or not less than three years, or imprisonment for not exceeding two years, with or without hard labour, 24 & 25 V. c. 100, s. 48.

A boy under fourteen years of age is deemed in law incapable of committing a rape, and if he be under that age, no evidence will be admitted to show that in point of fact he could commit the offence. *Reg.* v. *Phillips*, 8 Car. & Payne, 736.

In an indictment for rape, the party ravished is an admissible witness; but the value of her testimony must be left to the jury. For instance, if the witness be of good fame, if she presently discovered the offence, and made search for the offender; if the party accused fled for it; these are corroborative circumstances, which give greater probability to her testimony. But, on the other hand, if she concealed the injury, after she had an opportunity to complain of its perpetration; if the place where the act is alleged to have been committed is where it is possible she might have been heard, and made no outcry,—these carry a strong but not conclusive presumption that her testimony is false and feigned.

Moreover, an assault to ravish, however shameless and outrageous it may be, unless it amount to some degree of consummation of the deed, is not a rape.

It is the essential character of this crime that it must be against the will of the female on whom it is committed. And if a woman be beguiled into her consent, by any artful means, it will not be a rape; and, therefore, having carnal knowledge of a married woman, under circumstances which induced her to suppose it was her husband, was held by a majority of the judges not to be a rape, *Rus. Ry. C. C.* 487. However, the crime is not mitigated by showing that the woman yielded at length to violence, if her con-

sent were obtained by duress, or threats of murder; nor will any subsequent acquiescence on her part do away with the guilt of the ravisher. It is a rape to force a prostitute against her will: so it is for a man to have forcible copulation with his own concubine, because the law presumes of a possibility of a return to virtue. A man, however, cannot be himself guilty of a rape upon his own wife, for the marital consent cannot be retracted, 1 *Hale*, 629; but he may be a criminal in aiding and abetting another in such a design.

All who are present, of both sexes, aiding in the perpetration of rape, are punishable with penal servitude for six or eight years, or imprisonment for three years.

II. CARNAL KNOWLEDGE OF GIRLS.

By 24 & 25 V. c. 100, s. 49, unlawfully and carnally knowing any girl under the age of *ten* years, in which case the consent or non-consent is immaterial, as, by reason of her tender age, she is incapable of judgment or discretion, is punishable with penal servitude for life or three years, or imprisonment not above two years, with or without hard labour.

Carnal knowledge of a girl between the age of *ten* and *twelve* years, with or without consent, subjects the offender to penal servitude for three years, or imprisonment not exceeding two years, with or without hard labour.

In the last two cases, any indecent assault, or attempt to have carnal knowledge of a girl under twelve years, is liable to any term of imprisonment not above two years, with or without hard labour, 24 & 25 V. c. 100, s. 52.

III. PROCURATION FOR PROSTITUTION.

To check the odious practices of brothel-keepers and procuresses, and other infamous purposes, the 24 & 25 V. c. 100, s. 49, enacts that whoever, by false pretences or representation, or fraudulent means, procures any woman or girl under the age of 21 years to have carnal connection with any man, is subject to imprisonment for any term not exceeding two years, with or without hard labour.

This offence is a misdemeanour, and triable at quarter sessions.

IV. BUGGERY AND BESTIALITY.

Sodomy or buggery, from the Italian *buggerare*, is a carnal copulation against nature, as a man or woman with an animal, or a man with a man; and was anciently punished with burning, some say burying, alive.

By 24 & 25 V. c. 100, s. 61, every person convicted of the abominable crime of buggery, committed either with *mankind* or any *animal*, is punishable with penal servitude for life, or any term not less than ten years.

If committed on a boy under fourteen, it is a felony in the agent only, 1 *Hale*, 47.

Blackstone properly observes on this truly unnatural offence, that it is "a crime which ought to be strictly and impartially proved, and then as strictly and impartially punished. But it is an offence of so dark a nature, so easily charged, and the negative so difficult to be proved, that the accusation should be clearly made out; for, if false, it deserves a punishment inferior only to the crime itself."

Much difference of opinion formerly prevailed among legal authorities, whether the proof of both penetration and emission of semen was essential to constitute carnal knowledge in the offences of *rape*, *abusing girls*, and *buggery*. Prisoners have been repeatedly acquitted on the want of proof of emission, 1 *East*, *P. C.* 437; while, on the other hand, in one instance, the accused was found guilty under the direction of Mr. Justice Bathurst, who did not consider this fact necessary to the consummation of guilt. But in Hill's case, which was argued in 1781, a large majority of judges decided both circumstances were necessary, though Buller, Loughborough, and Heath maintained a contrary opinion. All difficulty, however, on these points has been removed by the 9 G. 4, c. 31, by which it is provided that it shall not be necessary, in any of the crimes last mentioned, to prove the emission of seed in order to constitute carnal knowledge; but that the carnal knowledge shall be deemed complete upon proof of penetration only. The provision is continued in the 24 & 25 V. c. 100.

V. KIDNAPPING.

This is an inferior description of offence against the person, and amounts only to a misdemeanour: it consists in carrying off a man, woman, or child, from their own country and sending them into another. It is punishable by the common law with fine and imprisonment.

VI. CHILD-STEALING.

By 24 & 25 V. c. 100, s. 56, if any person shall unlawfully, by force or fraud, take, carry, or entice away or detain, any child under the age of fourteen years, with intent to deprive the parent or any other person having the lawful care or charge of such child, of the possession of it; or with intent to steal any article of apparel, or ornament, or value upon the person of such child; or

conceal or harbour any child so stolen: every such person is guilty of *felony*, and subject to penal servitude for seven or not less than three years, or to imprisonment for not exceeding two years, with or without hard labour. If the offender is a male, under sixteen years of age, whipping may or not be added; but no person is liable who claims a right to the possession of a child, or is the mother or the illegitimate father of it.

VII. ABDUCTION OF WOMEN.

The taking away of a child from a parent by any sinister means, as violence, deceit, conspiring, intoxication, or fraud, for the purpose of marrying it, was always indictable as a misdemeanour, and in particular cases punishable as a capital felony; and an indictment will now lie for a conspiracy to marry an infant, in order to obtain the possession of fortune. By 24 & 25 V. c. 100, s. 53, it is enacted that where any woman has interest, present or future, in any real or personal estate, or is heiress presumptive, or next of kin, to any one having such interest, if any person, from *motives of lucre*, take away or detain such woman against her will, *with intent* to marry or defile her, or to cause her to be married or defiled by any other person; every such offender, and every person counselling, aiding, or abetting him is guilty of FELONY, subject to penal servitude for not exceeding fourteen nor less than three years, or to imprisonment not above two years. The offender is incapable of taking any of her property.

By s. 55, if any person take, or cause to be taken, any unmarried girl under *sixteen years of age*, out of the possession and against the will of her father or mother or other person having the lawful charge of her, such offender is subject to imprisonment for not above two years.

It is an offence to take away from the custody of her *putative* father a natural child under sixteen years of age.

As the offence of abduction is positively prohibited, the absence of a corrupt motive will not be a defence to the charge; and it is no legal excuse that the defendant made use of no other means than the common blandishments of a lover to induce her to elope and marry him.

VIII. ATTEMPTS TO PROCURE ABORTION.

By 24 & 25 V. c. 100, s. 58, every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or unlawfully use any instrument or other means with the like intent; and whoever, with the intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious

ıing, or use any instrument or other means with the like ıtent; shall be guilty of felony, liable to be kept in penal servi- ıde for life, or not less than three years, or to imprisonment for ɔt exceeding two years, with or without hard labour or solitary ınfinement.

To supply or procure any poison or other noxious thing, or any ıstrument, knowing that the same is intended to be used to pro- ıre the miscarriage of a woman, whether she be or not with child, a misdemeanour, liable to penal servitude for three years, or ıprisonment for not exceeding two years, with or without hard bour, s. 59.

If any woman be delivered of a child, every person who, by any *cret* disposition of the dead body thereof, whether such child died fore, at, or after its birth, endeavours to *conceal the birth*, is guilty a misdemeanour, liable to be imprisoned for not exceeding two ars, with or without hard labour: provided that, if any person ied for the murder of a child be acquitted, it shall be lawful for e jury to find, in case it so appear in evidence, that the child had cently been born, and that such person did, by some secret dis- sition of the dead body, endeavour to conceal the birth; and ereupon the court may pass such sentence as if such person had en convicted upon an indictment for the concealment of the rth, 24 & 25 V. c. 100, s. 60.

IX. ADMINISTERING POISONS OR SHOOTING.

By 24 & 25 V. c. 100, whoever shall, with *intent* to commit urder, administer to, or cause to be taken by, any person, any ison or other destructive thing, or shall by *any means whatever* use to any person any bodily injury, dangerous to life, shall be ilty of felony, subject to penal servitude for life, or not less than ree years, or imprisonment for two years, s. 11.

Although no *bodily injury be effected*, if any person, with intent *commit murder*, administer any poison or other destructive ing; or shoot at, or attempt to discharge any kind of loaded arms; attempt to drown, suffocate, or strangle any person, he is guilty felony, punishable in like manner. So is the attempting to mmit these offences.

Persons using *chloroform*, or laudanum, or other stupefying ing, or drug, in order to aid them in the commission of a felony, e guilty of felony, liable to penal servitude for life, or three years, imprisonment for two years, s. 22.

X. SALE OF ARSENIC.

As the unrestricted sale of arsenic has facilitated the commissio the crimes mentioned in preceding sections, the 14 V. c. 13,

enacts that every person who *sells any arsenic* shall, before delivery to the purchaser, enter in a book, according to a prescribed schedule, or the *like effect*, the particulars of such sale, namely, the quantity of arsenic sold, the purpose for which it is stated to be required, the day of the month and year of the sale, and the name, place of abode, and condition or occupation of the purchaser; into all which particulars the seller is authorised and required to inquire before delivering the arsenic to the purchaser. Such entries to be signed by the seller and buyer, or if the buyer profess to be unable to write, the fact to be added, "cannot write;" and where a witness is requisite, as in next section, to the sale, such witness to sign his name and abode.

By s. 2, no person is to sell arsenic to a person unknown to the seller, unless the sale be made in the presence of a witness who is known to the seller, and to whom the buyer is known; such witness to sign his name and abode, before the delivery of the arsenic. No arsenic is to be sold to any person who is not of full age.

S. 3 provides for *colouring* arsenic, by enacting that no person shall sell arsenic unless, before the sale, it be mixed with soot or indigo, in the proportion of one ounce of soot or half an ounce of indigo at the least, to one pound of arsenic, and so in proportion for any greater or less quantity. Provided, however, such arsenic is stated by the purchaser not to be required for agriculture, but for some other purpose for which such admixture would render it unfit, it may be sold unmixed in a quantity of not less than ten pounds at one time.

Neglect of either of these provisions by either seller, buyer, or witness, or giving false information in relation to the particulars the seller is authorized to inquire into, subjects for each offence to a penalty of £20 upon summary conviction before two justices in England and Ireland, or two justices or a sheriff in Scotland. But the provisions of the act do not extend to sales of arsenic in medicine, under a regular medical prescription; or to sales by wholesale or retail dealers, upon order in writing in the ordinary course of wholesale dealing. In the construction of the act the word "arsenic" includes all other colourless poisonous preparations of arsenic. *See* further, 31 & 32 V. c. 121; *ante*, Part III., chap. 15, "Chemists."

In attempts to administer poison, it seems not necessary that there should be a *manual* delivery; leaving poison in the way of another, with intent to kill, would, it appears, constitute an administering, *Rex* v. *Harley*, 4 Car. and Payne, 369.

XI. MALICIOUSLY WOUNDING.

By 24 & 25 V. c. 100, unlawfully to shoot at, or in any manner attempt to discharge any kind of loaded arms, or to stab, cut, or

wound, any person with intent to *maim*, *disfigure*, or *disable* such person, or do some other grievous bodily harm, or with intent to prevent the apprehension of the party so offending, or of his accomplices, subjects to penal servitude for life, or not less than fifteen years, or imprisonment for not more than three years.

This is an amendment of 9 G. 4, c. 31, s. 12, and it is not now necessary, in order to convict the offender, that if death had ensued from the act charged, the crime of *murder* would have been committed. By this improvement those disgraceful exhibitions of ruffianly vengeance, at one period so frequent in this country, especially in the northern counties, and which under the previous law escaped any heavier punishment than that of an ordinary assault, will be brought within reach of the statute.

XII. MALICIOUS INJURIES BY FIRE OR DESTRUCTIVE MATERIALS.

By 24 & 25 V. c. 100, s. 29, whoever shall unlawfully and maliciously, by the explosion of *gunpowder* or other explosive substance, destroy or damage any dwelling-house, any person being therein, is guilty of felony, subjecting to penal servitude for life, or not less than fifteen years, or imprisonment not exceeding three years. Blowing up any building with intent to murder, or whereby the life of any person is endangered, or by any explosive substance doing any grievous bodily harm to any person; or causing to explode, or sending, delivering, or casting upon any person, any explosive substance or corrosive fluid, whereby grievous bodily harm is occasioned; all these offences subject to the preceding punishment. Attempting any of these offences subjects to penal servitude for fifteen or ten years, or imprisonment for not exceeding two years.

The manufacturing or having in possession any explosive substance, or any dangerous or noxious thing, or any machine or instrument, for the purpose of committing any of the above offences, is a misdemeanour, liable to imprisonment for not exceeding two years.

Male offenders under 15 years of age may, in addition to any other sentence, be publicly or privately whipped, not exceeding thrice.

By s. 31, to set or place or permit any *spring-gun*, *man-trap*, or other engine calculated to destroy life or inflict grievous bodily injury, subjects to penal servitude for three years, or imprisonment with hard labour for two years.

Any constable or peace officer may take into custody, without warrant, any person whom he shall find loitering in any place during the night, and whom he shall have good cause for suspecting of any felony under the act; but such person not to be detained after noon of the following day without being brought before a justice.

XIII. MALICIOUS OFFENCES ON RAILWAYS.

By 24 & 25 V. c. 100, ss. 32, 33, if a person maliciously place or throw upon a railway any wood, stone or other thing, or remove any rail, sleeper, or other thing, or move or divert any point or other machinery, or show, hide, or remove any signal, or light, or do, or cause to be done, any other thing, with intent, in any of the said cases, to obstruct or injure any engine or carriage using such railway, or to endanger the safety of any person travelling or being upon such railway, every such offender, on conviction, is liable to penal servitude for life, or not less than seven years, or to be imprisoned, with or without hard labour, for a term not exceeding three years. A like punishment is enacted if a person maliciously throw, or cause to fall or strike against, into, or upon any engine or carriage on any railway, wood, stone, or other matter, with intent to endanger the safety of any person.

By s. 34, whoever, by any unlawful act, or wilful omission, or neglect, omits to do anything upon a railway, or assists therein, by which persons are endangered, is liable to two years' imprisonment.

A like punishment may be inflicted on the racing, wanton, or furious driving, of any carriage or vehicle, s. 35.

XIV. ILL-TREATMENT OF APPRENTICES, SERVANTS, OR CHILDREN.

By 24 & 25 V. c. 100, s. 20, whosoever, being legally liable, either as a master or mistress, to provide for any apprentice or servant necessary food, clothing, or lodging, wilfully and without lawful excuse, refuse or neglect to provide the same, or maliciously do or cause to be done any bodily harm to any such apprentice or servant, so that the life of such apprentice or servant is endangered, or the health of such apprentice or servant is likely to be permanently injured, is liable to be kept in penal servitude for three years, or to be imprisoned not exceeding two years, with or without hard labour.

By s. 27, to abandon or *expose any child*, being under the age of two years, whereby the life of such child is endangered, or the health likely to be permanently injured, subjects to penal servitude for three years, or imprisonment for two years, with or without hard labour.

XV. ASSAULTS.

Of minor assaults, for which the sufferer seeks redress by action, we have already spoken under the head of Civil Injuries; in this section will be noticed the more serious attacks on the person, which, either from endangering the officers of justice, the security

of industry and property, or the public peace, are more properly an object of criminal punishment than individual prosecution.

By 24 & 25 V. c. 100, s. 26, by *threats* or *force* to obstruct a *clergyman* in the celebration of divine service, or otherwise officiating in any church, chapel, meeting-house, or other place of worship, or in the lawful burial of the dead, subjects to imprisonment, with or without hard labour, for not exceeding two years.

By s. 37, to assault and strike or wound any *magistrate, officer*, or *other person* lawfully authorized, when discharging his duty, in the preservation of any *vessel in distress*, or of any vessel, goods, or effects wrecked, stranded, or cast on shore, or lying under water, subjects the offender to penal servitude for six or four years, or to imprisonment, with or without hard labour, for such term as the court shall award.

Persons convicted of any of the following offences as misdemeanours, that is, of any assault with intent to commit felony; of any assault upon a peace or revenue officer in the due execution of his duty, or upon any person acting in aid of such officer; or of any assault upon any person with intent to prevent the lawful apprehension of the party so assaulting, or of any other liable by law to be apprehended; in any of these cases the offender may be imprisoned for any term not *exceeding two years*, and also fined, and required to find sureties to keep the peace.

By s. 40, to beat, wound, or use violence to prevent any *seaman, keelman*, or *caster*, from exercising his trade or occupation; or to use violence with intent to hinder any one from selling or buying any *wheat* or *other grain, flour, meal*, or *malt*, in any market or other place; or towards any person having charge of such commodities, with intent to stop their conveyance, subjects the offender, on the conviction of two justices of the peace, to imprisonment and hard labour for not exceeding three calendar months.

S. 42 grants a summary power of punishing persons for common assaults, by enacting, that if any person assault another, two justices of the peace, upon complaint by the aggrieved party, may determine the offence, and the offender be sentenced to pay any fine, which, with costs, does not exceed £5; or, on non-payment, be imprisoned for not more than two calendar months. If the justices dismiss the complaint, they are to deliver a certificate, stating the fact of such dismissal to the party against whom the complaint was preferred; and the conviction or certificate shall be a bar to any future proceedings. When the justices shall deem any assault or battery felonious, or a fit subject for prosecution by indictment, they may abstain from any adjudication, and deal with the case as they would have done before the passing of the act.

In case of aggravated assault, s. 43 empowers two justices to punish on summary conviction any person charged with an assault upon *any female*, or *male above fourteen years of age*, and occa-

sioning actual bodily harm, by six months' imprisonment, with or without hard labour, or by a fine not exceeding, with costs, £20. Upon expiration of punishment, the offender may be bound to good behaviour for six calendar months.

By 2 & 3 V. c. 47, s. 65, the constables of the metropolitan police, within their limits, may apprehend *without a warrant* for a recent and aggravated assault, though not committed in their presence; a power which constables elsewhere are not empowered to exercise.

By 3 & 4 V. c. 50, the board of directors of any canal or navigable river, or their clerk or agent, are authorized to nominate such persons as they think fit to two justices, to be appointed to act as constables to preserve the peace on canals and rivers, or railways connected therewith, and within one quarter of a mile thereof. 34 & 35 V. c. 32, which amends the law relating to violence and intimidation, has already been considered on page 353.

CHAPTER XIV.

Offences against the Habitations of Individuals.

THE offences that more immediately affect the habitations of individuals are *arson*, *burglary*, *house-breaking*, and *stealing in a dwelling-house*; but the last will fall under the subsequent head of Theft or Larceny.

I. ARSON.

Arson is the malicious burning of the whole or part of a dwelling-house, and, any person being therein, it is punishable, by 24 & 25 V. c. 97, s. 2, by penal servitude for life, or not less than three years, or imprisonment not exceeding two years, with or without hard labour, solitary confinement, or whipping.

Other offences by fire are referred to the chapter on *Malicious Injuries*.

A fire through negligence does not amount to *arson*; but it may form the subject of an action against the negligent person if the property of another be injured thereby.

A person wilfully setting fire to his own house *in a town*, without injuring or intending to injure another, is a high misdemeanour, though it does not amount to arson; and is punishable by imprisonment and perpetual sureties for good behaviour.

It has been decided that an attempt, or preparation, by a man to set fire to his own house, in a town, though the fire be never kindled, is a misdemeanour; and that every attempt to commit a felony is a misdemeanour; and, in general, an attempt to commit a

misdemeanour is an offence of the same nature. The law adopts the maxim of taking the *will for the deed*, both in treason and misdemeanour.

II. BURGLARY.

Burglary or nocturnal house-breaking, is the breaking and entering of a dwelling-house, any person being therein, and is punishable by 24 & 25 V. c. 96, s. 52, by penal servitude for life, or not less than three years, or imprisonment for not above two years, with or without hard labour, or solitary confinement.

The statute limits the nocturnal hours by explaining the night to extend from nine in the evening till six next morning; so that the former vague test of ascertaining whether there was sufficient light to discern a man's face is no longer requisite.

No building, although within the same curtilage with the dwelling-house, and occupied therewith, shall be deemed to be part of such dwelling-house, for the purpose of burglary, unless there be a communication between such building and dwelling-house, either immediate or by means of a covered and enclosed passage, leading from one to the other.

By s. 58, if any person be found *in the night* armed with any dangerous or offensive weapon, with intent to break into any house and commit any felony therein, or have in his possession, without lawful excuse, any picklock key, crowbar, and other implement of housebreaking, or have his face blackened or otherwise disguised, or be found *by night* in any house with intent to commit a felony, such offender is guilty of a misdemeanour, and liable to be imprisoned, with or without hard labour, for any term not exceeding three years. Conviction of such misdemeanour, after a *previous* conviction either of felony or misdemeanour, renders the offender liable to penal servitude for three years, or imprisonment for not exceeding two years.

To constitute burglary, the breaking must be in the *night*. 2. It must be a *dwelling-house;* that is, a place where some person generally or occasionally resides, so that a warehouse or other unoccupied place is not entitled to the same protection. 3. There must be an *entry* with a *felonious* intent; the *entry* may be by taking out the glass, picking or opening a lock, by lifting the latch or flap of a cellar usually kept down by its own weight (*Moo. C. C. R.* 377); or unloosing any fastening, as of a window, by introducing the hand through a broken pane, or even by stepping over the threshold, provided it is with a *felonious* intent, that is, to commit a murder, rape, or robbery; all these are burglarious entries. It does not seem, as formerly, that both the entering and breaking out need be nocturnal; if the entering be by day, and the breaking out by night, it is sufficient. It has been decided, even, if a person commit a felony in a house, and break out of it

in the night-time, this is burglary, though he were lawfully in the house as a lodger, *Reg.* v. *Wheeldon*, 8 *C.* & *P.* 747.

If a servant open and enter his master's door with a felonious design, or if any other person, lodging in the same house, or in a public inn, open and enter another's door, with such felonious intent, it is burglary.

If a person conspire with a robber, and let him in, it is burglary in both. So, also, to knock at the door, and, upon opening it, rush in, with a felonious intent; or, under pretence of taking lodgings, to fall upon the landlord and rob him.

A chamber in a college, or an inn of court, where each occupant has a distinct property, is the *dwelling-house* of the owner. So even a loft over a stable, used for the abode of a coachman, which he rents for his own use and that of his family, is a place which may be burglariously broken, 1 *Leach*, 305. A burglary may be also committed in a lodging-room, or in a garret used for a work-shop, and rented together with an apartment for sleeping; and if the landlord does not sleep under the same roof, the place may be laid as the dwelling of a lodger. But if I hire a shop, part of another man's house, and work or trade there, but never lodge there, it is no dwelling-house, nor can burglary be committed therein. Neither can burglary be committed in a tent or booth erected in a market or fair, though the owner may lodge there; for the offence can be committed only in permanent edifices.

III. BREAKING INTO HOUSE, SHOP, OR CHURCH.

By 24 & 25 V. c 96, s. 56, breaking and entering any dwelling-house, shop, warehouse, or counting-house, and stealing therein any chattel, money, or valuable security, to any value, subjects to penal servitude for fourteen, or not less than three years, or imprisonment for not exceeding two years.

Breaking and entering a church, chapel, or any building within the *curtilage*, subjects to seven years' penal servitude, or two years' imprisonment with hard labour or solitude.

But the term *curtilage*, used in the act, is not easily defined; it would seem, from Hawkins, to be the common fence or boundary, including any outhouse or barn within the homestead.

Definition.—The legal meaning of the terms *breaking* and *entering*, in housebreaking and stealing, differs from the popular signification of the words. It is not necessary that force or violence, in the popular sense, should be used. The *breaking* is complete by merely drawing a latch, or opening a window and putting in a hand; or if any offender crawl down the chimney, or fraudulently induce a domestic servant to admit him into the house; or procure admission by a fraudulent ejectment, or false pretence of taking lodgings; each would be a breaking in law. For an *entry*, it is

ough, without the employment of force in the ordinary meaning, erely to insert an instrument through the window or over or ıder the threshold.

CHAPTER XV.

Offences against Private Property.

HE chief enactments of the criminal law were formerly directed the restraint of violence, and intended more to protect the per- n from outrage, than property from depredation. Lawless force, t fraud, was then the prevalent characteristic of crime. The crease of riches, and the fact that the ferocious and vengeful ssions of our nature are more under the control of reason and ental culture, have given a new complexion to the criminal lendar, as evinced in the diminution of personal, and the increase property offences. In consequence of this social revolution, the ost arduous task of the modern legislator is not to protect the rsons of individuals from open or atrocious assault, but their ssessions from crafty, insidious, and fraudulent appropriations. he numerous and increasing class of offences directed against the curity of private property will be treated of in the four following apters, classed thus :—

1. *Forgery.*
2. *Theft.*
3. *Robbery.*
4. *Malicious Injury to Property.*

FORGERY.

Forgery is the fraudulent making or altering a written instrument, to the detriment of another person. The capital punishment nexed to the higher class of offences, under this head, has been itigated, and, by 24 & 25 V. c. 98, is penal servitude for life, or t less than three years, or imprisonment for not exceeding two ars, with or without hard labour or solitary confinement.

To constitute forgery, it is not necessary the *whole* instrument ould be fictitious. Making a fraudulent insertion, alteration, or asure, in any material part of a true document, by which another ay be defrauded; the fraudulent application of a false signature a true instrument, or a real signature to a false one; and the teration of the date of a bill after acceptance, by which its payent may be accelerated—are forgeries.

If a note be made payable at a banker's who fails, it is forgery introduce a piece of paper over the name of the banker who s failed, containing the name of another banking-house, 2 Leach,

1040. Expunging an endorsement on a bank-note with a liquor unknown, is held to be an erasure within the statute. The name of a fictitious person or acceptor of a bill with the signature of the writer is a forgery.

The essence of forgery is an *intent* to *defraud*, and, therefore, the mere imitation of another's writing, the assumption of a name, or the alteration of a written instrument, where no person can be injured, does not come within the definition of the offence. Neither does the using a fictitious name, though for the purpose of concealment and fraud, amount to forgery, unless it were for that precise species of fraud of which the forgery forms a part, *Russ. & Ry. C. C.* 269.

Whether the fraud be effected on the party to whom the instrument is addressed, or whose writing is counterfeited, or upon a third person, who takes it upon the credit it assumes, is immaterial; nor is it of consequence whether the counterfeited instrument be such as, if real, would be effectual to the purpose it intends, so long as there is sufficient resemblance to impose upon those to whom it is uttered. Thus, the fabrication of an order for the payment of a sailor's prize-money is forgery, though it be invalid, as wanting the requisites prescribed by law, 2 *Leach*, 883.

Lastly, to complete the offence, the instrument forged should be parted with, or tendered, or offered, or used in some way to get money or credit upon it. Delivering a box, containing, among other things, forged stamps, to the party's own servant, to be forwarded by a carrier to a customer in the country, is an uttering. 4 *Taunt.* 300. But merely showing a man an instrument, the uttering of which would be criminal, is not an uttering.

The 24 & 25 V. c. 98, consolidates and amends the statute law of England and Ireland relating to indictable offences by forgery. Offences and their punishments are classified as under:—

Great Seal and Sign Manual.—Whoever shall forge, counterfeit, or knowingly utter the great seal of the United Kingdom, the Queen's privy seal or signet, the royal sign manual, or the seals of Scotland or Ireland, or knowingly utter forged impressions thereof, is punishable by penal servitude for life, or not less than three years, or imprisonment for not exceeding two years, with or without hard labour or solitary confinement.

Wills, Power of Attorney, Stock.—To forge, alter, offer, or utter any will or codicil; or to forge, alter, or utter any power of attorney or other authority, to transfer any share or interest in any stock, annuity, or other public fund, transferable at the Bank of England or the Bank of Ireland; or falsely and deceitfully to *personate* the owner, and receive any dividend payable in respect of such share or interest, or procure and assist in the commission of any of such offences: in all these cases the offender is liable to penal servitude for life, or not less than three years, or imprisonment for two years, with or without hard labour or solitude.

To forge, alter, offer, or utter an exchequer bill, debenture, India bond, Bank of England or Ireland note, bill of exchange, promissory note, warrant, order, undertaking for the payment of money, or an assignment, endorsement, or acceptance thereon, is punishable with penal servitude for life, or not less than three years, or imprisonment for two years with or without hard labour. So is clerks making false entries in the books in which the accounts of public stock are kept at the Bank of England or Ireland; or fraudulent transfers in any other name than the true owner's; forging a transfer of any public stock, or stock of any public company established by charter or act of parliament.

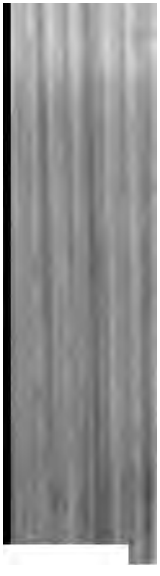
By s. 25, if a person obliterate or alter a *cheque* or its crossing, drawn on a banker, with intent to defraud, he is liable to penal servitude for life or three years, or imprisonment for two years.

Forging the *attestation* to a power of attorney is punishable with penal servitude for seven, or not less than three years, or imprisonment for two years, s. 4. Clerks of the Bank of England or Ireland fraudulently making out dividend warrants for a greater or less sum than due, are punishable as in the case of a forged attestation.

Deeds, Bonds, and False Bail.—Forging or uttering a deed, bond, receipt, acquittance, or order for delivery of goods, is penal servitude for fourteen or seven years, or imprisonment for two years. Fraudulently acknowledging any recognizance, bail, fine, recovery, or judgment, in the name of another, seven years' penal servitude, or two years' imprisonment.

Bank of England or Ireland Paper.—Knowingly purchasing or receiving, or having in possession without lawful excuse, the proof of which lies on the party accused, forged bank-notes; making or selling any mould for making paper with the words "Bank of England or Ireland," or other words in Roman letters visible in the substance, or for making paper with carved or waving wire lines, except paper used for bills of exchange and notes, not in imitation of the watermarks and lines of the banks; engraving on any plate or material any bank-note, or using or having such plate, or uttering or having paper on which a bank-note is printed; engraving on any plate or material any word, number, character, or ornament resembling any part of a bank-note, or using or having such plate, or uttering or having any paper on which there is any of the aforesaid impressions: in all these cases, knowingly committed without lawful excuse, the offender is punishable with penal servitude for fourteen, or not less than three years, or imprisonment for not above two years, ss. 12, 19.

Private Bankers' Paper.—Making or having in possession any mould or instrument for manufacturing paper with the name of a private banker in the substance; manufacturing or having such paper, or causing the name to appear in the substance of any paper; engraving on any plate or material any bill of exchange or pro-



Further provisions against forgery have been made by the Forgery Act, 1870, 33 & 34 V. c. 58, which imposes penalties (penal servitude or imprisonment) on the forgery of stock certificates issued under the National Debt Acts, or the personation of owners of stock, or the engraving plates for stock certificates.

CHAPTER XVI.

Theft.

THEFT, or larceny, which last is the legal term for stealing, is the felonious taking and carrying away of personal property, with intent to despoil or detriment the owner, lawful possessor, or some other party.

It is sometimes distinguished into *simple* and *compound* larceny: simple, when the taking is unaccompanied with aggravating circumstances; compound, when the theft is aggravated by being committed upon the person, or in the dwelling-house. Stealing from the person may amount to robbery, if attended with violence; or, if from the house, to burglary or housebreaking, according as it is perpetrated in the night, or the entry or exit of the offender has been effected by any degree of force.

Formerly, grand larceny was punishable by death, but the present punishment for all larcenies is penal servitude for a greater or lesser term, or imprisonment; to which last, hard labour, solitary confinement, or whipping, if a male under sixteen, may be added.

Upon a conviction for theft, it is usual to order immediate restitution of such goods as are brought into court, or the party may peaceably retake his goods wherever he happen to find them; or, if the offender be convicted on the evidence of the owner of the goods, and afterwards be pardoned, the owner may bring trover against him, or against any one in whose possession the goods may be found after the conviction. But no action will lie against a man who may have fairly purchased them in *open* market, and sold them before the conviction, notwithstanding the owner gave him notice of the theft while they were in his possession.

Petty stealing may be punished summarily by a single justice of the peace.

Thieves taken in the act may be apprehended without a warrant, by the aggrieved party, or his servant, or any person authorized by him, or by any peace officer, and carried before a magistrate.

Let us return from the punishment and apprehension of the thief to the characteristics of his crime. In the definition of theft given above, it is said the taking must be *felonious*; by

which is meant, against the will of the owner, either in his presence or clandestinely, or by force, surprise, fraud, or trick, the owner not voluntarily parting with his entire interest in the property.

In respect to the *carrying away* there must be a *fraudulent intent* at the time in the offender to convert the property to his own use. In cases where horses or carriages are hired and never returned, if the jury be of opinion, from the circumstances, that the person to whom they are delivered, intended at the time of the hiring, never to restore them, he is guilty of stealing. But it is not theft if the design of wrongfully appropriating them was conceived and executed *subsequently* to the hiring.

Further, as to the *carrying away* essential to the offence, a bare removal from the place in which the goods are deposited is sufficient. So, if a thief, intending to steal plate, take it out of the chest in which it is laid, and lay it down upon the floor, but is surprised before he can make his escape, it is larceny. When a man snatched an earring from a lady's ear, and afterwards dropped it in her hair, it was held a sufficient removal to constitute a robbery. The removal of a parcel from one end of a waggon to another, with intent to steal, amounts to a larceny. But where a bale of goods was raised, and placed upon end, this was not thought to be a sufficient carrying away, there not being a complete removal from the place it before occupied.

When a person has *lawfully* obtained possession of goods under a charge of keeping them, he will be guilty of stealing at common law in embezzling them. Thus, if a master deliver property into the hands of a servant for a special purpose, as to leave it at the house of a friend, or to get change, or deposit with a banker, the servant will be guilty of felony in applying it to his own use, 2 *Leach*, 870. And if several persons play together at cards, and deposit money for that purpose, not parting with their property therein, and one sweep it all away and take it to himself, he will be guilty of theft, if the jury find that he acted with a felonious design.

It seems doubtful whether extreme necessity is sufficient to negative a felonious intention to appropriate. The inference of a felonious design is not necessarily excluded by the circumstance that property of equal value has been left in exchange; though leaving the *price* of the goods would be presumptive of innocence, 2 *Criminal Law Report*, 17.

The finder of property that has been lost is only trustee for the owner, and his *lawful* possession of it is determined by breaking a parcel, or opening a box, with intent to embezzle part or the whole of the contents. But though the *breaking* of *bulk* is by a strained legal inference deemed theft, the implied trust would not be determined by purloining or disposing of the whole package.

Theft is distinguishable from a mere trespass by the intent to despoil, and fraudulently appropriate another man's goods.

It is distinguishable from the offences of obtaining by false pretence, extortion by threat, deceit, and embezzlement by the circumstance that a taking and wrongful removal, in the first instance, are essential to the offence.

It is also distinguishable from the offences of obtaining by false pretence, deceit, and extortion by threat, by the circumstance, that (except in the case of robbery) the taking does not constitute theft, where the owner intends to transfer the right of property. For instance, whatever may have been the intent of a purchaser who has bought goods on *credit*, the conversion of such goods to his own use will not amount to larceny, however gross the fraud may be, the seller having parted with the possession of his property on the credit of the buyer in the way of sale. But if a cheat is practised, as to whom the goods shall be delivered, and the party thereby contrives to get the goods into his possession, or where it appears from circumstances that the owner has not voluntarily parted with his property, the transaction may be theft.

Theft cannot be committed by one who is the sole owner of the thing taken. To this rule, however, there is an exception; as in the case of a man purloining the goods he has intrusted with a carrier or servant, with intent to defraud the latter, or the hundred, by charging either with the value of the property the owner himself has abstracted, 4 *Criminal Law Report*, 65.

Neither can a wife be charged with theft in taking the goods of the husband; nor is a stranger guilty in receiving them from the wife, unless he has committed adultery with her, 1 *Russ. on Crimes*, 27.

Every chattel which is the subject of theft is presumed to have an owner, though such owner cannot always be ascertained. The ownership of some particular descriptions of property is as follows: of grave-clothes, in the personal representatives of the deceased; children's clothes, either in the parents or the children, according to circumstances, and the general rules regarding property.

Theft can be committed of such things only as are of some intrinsic value; but it may be committed of things valuable to the owner, though not of value to any one else, nor saleable.

Theft cannot be committed of animals that are wild by nature and at large, as deer in a chase or forest, hares, rabbits in a warren, or wild fowl—rooks, for instance; but deer in an enclosure, fish in a tank, or pheasants in a mew, as well as swans marked, and all valuable domestic animals, are subjects of larceny. Dogs, birds, pigeons not enclosed, and other animals kept for pleasure, not being subjects of larceny at common law, are protected by statute or summary proceedings before justices.

A human body, living or dead, is not the subject of theft.

The stealing of children, however, is, in certain cases, made felony, p. 685.

The 24 & 25 V. c. 96, consolidates and amends the statute law of England and Ireland relating to larceny and similar offences.

STEALING IN A DWELLING-HOUSE.

By s. 61, the stealing any *property* in a dwelling-house, with menace or threat, by which any one therein is put in bodily fear, is felony, subject to penal servitude for not exceeding fourteen, nor less than three years, or imprisonment not above two years, with or without hard labour or solitary confinement.

By property is defined any "chattel, money, or valuable security."

Simply stealing in a dwelling-house without violence, is punishable with penal servitude for four years, or imprisonment; but stealing in a dwelling-house to the value of £5 or more, is felony, and subjects to the same punishment as stealing with menace, or threat, by which bodily fear is produced.

By s. 54, to enter any dwelling-house in the *night*, that is, between 9 P.M. and 6 A.M., with intent to commit felony, is liable to penal servitude for any term not exceeding seven years, or to imprisonment not above two years, with or without hard labour or solitude.

By s. 55, it is provided that, whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever with intent to break or enter into any dwelling-house or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession, without lawful excuse (the proof of which excuse shall lie on such person), any picklock, key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling-house or other building whatsoever with intent to commit any felony therein, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable at the discretion of the court to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

STEALING IN A SHOP, WAREHOUSE, OR COUNTING-HOUSE.

By s. 56, whosoever shall break and enter any dwelling-house, school-house, shop, warehouse, or counting-house, and commit any felony therein, or being in any dwelling-house, school-house, shop, warehouse, or counting-house, shall commit any felony therein, and break out of the same, shall be guilty of felony, and, being

convicted thereof, shall be liable at the discretion of the court to be kept in penal servitude for any term not exceeding fourteen years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

STEALING BY TENANTS OR LODGERS.

By s. 74, whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her or by her husband, or by any person on behalf of him or her, or her husband, shall be guilty of felony, and, being convicted thereof, shall be liable at the discretion of the court to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping; and in case the value of such chattel or fixture shall exceed the sum of £5, shall be liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding seven years and not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and if a male under the age of sixteen, with or without whipping.

STEALING IN A CHURCH OR CHAPEL.

By s. 50, breaking and entering any church, chapel, or other place of divine worship, and stealing therein any chattel; or, having stolen any chattel in any church or chapel, breaking out of the same, subjects to penal servitude for life, or not less than three years, or imprisonment not above two years, with or without hard labour, or solitude. Breaking and entering sacred places, with *intent* to commit a felony, is penal servitude for seven or three years, or imprisonment for two years, s. 57.

STEALING FROM LITERARY OR SCIENTIFIC INSTITUTIONS.

Institutions of this class, and for the fine arts, established under 17 & 18 V. c. 112, are protected; and any member of such institutions who shall steal, purloin, or embezzle the money, securities, goods, or chattels, or wilfully and maliciously destroy or injure them, or shall forge any deed, bond, security, receipt, or other instrument pertaining to such institutions, is made criminally liable, as a stranger would be, for the commission of any of the specified offences.

STEALING BY CLERKS AND SERVANTS.

By 24 & 25 V. c. 96, s. 67, if a clerk or servant, or person employed in that capacity, steal any chattel, money, or *valuable security*, belonging to or in the possession or power of his master, such offender is liable to penal servitude for any term not exceeding fourteen, nor less than three, years or to imprisonment not above two years, with or without hard labour or solitary confinement.

If a person steal any *tally*, *order*, or *other security*, entitling or evidencing the title to any share or interest in a public stock or fund, whether in this kingdom or in a foreign state, or in a fund of any body corporate, company, or society, or to any deposit in any savings-bank; or steal a debenture, deed, bond, bill, note, warrant, order, or other security for money, or for payment of money; or steal a warrant or order for the *delivery* or *transfer of goods* or valuable thing; every such offender is guilty of felony of the same nature, and punishable in the same manner, as if he had stolen any chattel or goods of the like value with that represented or evidenced in any of the foregoing instruments.

A like punishment for stealing by any person in the Queen's service, or in the police of any county, city, or borough, district, or place, s. 69.

For checking the misappropriation of articles, the 26 & 27 V. c. 103, provides that if any servant, contrary to the orders of his master, take any corn, pulse, or other food, for the purpose of giving the same to any horse or animal belonging to his master, or in his possession, he shall, on conviction before two justices, either be imprisoned, with or without hard labour, for not above three months, or forfeit a sum not exceeding £5. Previously this sort of misappropriation was a felony. Justices may dismiss the charge if too trifling. Appeal given against conviction.

STEALING GOODS IN PROCESS OF MANUFACTURE, ETC.

If a person steal, to the value of 10*s*., any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or any one or more of these materials mixed with each other, or mixed with any other material, while exposed, during the process of manufacture, in any *building*, *field*, or *other place*, such offender is liable to penal servitude for not above fourteen, nor less than three years, or imprisonment for not above two years, with hard labour or solitude.

A like punishment for stealing any goods or merchandise in any vessel, barge, or boat, of any description whatever, in any port of entry or discharge, or upon any navigable river, canal, or creek communicating therewith; or stealing from any dock, wharf, or quay adjacent thereto.

So also the punishment is the same if a person plunder or steal

any part of a ship or vessel which is in *distress*, *wrecked*, *stranded*, or cast on shore, or any goods or articles belonging thereto. But when articles of small value are stranded or cast on shore, and stolen without circumstances of cruelty, outrage, or violence, the offender may be prosecuted for simple larceny.

Persons in possession of shipwrecked goods may be apprehended, and not giving a satisfactory account how they came into possession of them, the justices may order them to be delivered to the owner; and the offender, over and above the value of the goods, to forfeit any sum not exceeding £20.

Persons offering shipwrecked goods for sale may be seized by the person to whom they are offered, or by any officer of the customs or excise, or peace officer, and may be dealt with in the same manner as last mentioned, ss. 63, 66.

STEALING HORSES, CATTLE, OR SHEEP.

If a person steal any horse, mare, gelding, colt, or filly; or any bull, cow, ox, heifer, or calf; or any ram, ewe, sheep, or lamb; or wilfully kill any such cattle, with intent to steal the carcase, or skin, or any part of the cattle so killed; or counsel, aid, or assist in the commission of such offence; he is subject to penal servitude for not above fourteen, or less than three, years, or imprisonment not above two years, with or without hard labour or solitude, ss. 10, 11.

STEALING DOGS.

By 24 & 25 V. c. 96, s. 18, any person convicted of stealing a dog before two or more justices, shall, for the first offence, be imprisoned, with or without hard labour, for any term not exceeding six months, or forfeit above the value of the dog any sum not exceeding £20; a *second* offence of dog-stealing is a misdemeanour punishable by fine or imprisonment, with or without hard labour, or by both, the imprisonment not to exceed eighteen months.

Persons in whose possession a stolen dog is found, or the skin of a stolen dog, and convicted before two justices of a guilty knowledge that such dog had been stolen, are liable to a penalty of £20; or, for a *second* offence, are punishable for a misdemeanour.

Any person found committing the offence of dog-stealing may be apprehended without a warrant; or, on oath, a warrant may be granted for searching suspected premises; or, a person to whom a stolen dog is offered for sale may apprehend the offender, and convey him and the dog before a justice. It is punishable by eighteen months' imprisonment to receive money for the restoration of a stolen dog, or corruptly under the pretence of restoring one, ss. 19, 20.

STEALING BEASTS OR BIRDS.

By s. 21, if a person steal any beast or bird *ordinarily kept in a state of confinement*, not being the subject of larceny at common law, every such offender, being convicted before a justice of the peace, shall, for the *first* offence, forfeit and pay, over and above the value of the beast or bird, such sum of money, not exceeding £20, as to the justice shall seem meet; and a person so convicted a *second* time shall be committed to hard labour for a term not exceeding twelve months, as the justice shall think fit.

By s. 22, the punishment is the same if persons *have in their possession* any beast or the skin thereof; or any bird, or the plumage thereof, knowing it to have been stolen, and for every subsequent offence persons are liable to such punishment as any person convicted of stealing any beast or bird is made liable to by the last preceding section.

The distinction between the statute and common law, in respect of the stealing of animals, may be thus stated. Domestic animals serving for *food* are the subject of larceny at common law, but wild animals in their natural state of liberty are not the subject of larceny; but at common law such animals as are used for food, if reclaimed or confined, become the subject of larceny at common law, as pigeons in a dove-cot, deer in a park, or fish in a net: but dogs, cats, ferrets, monkeys, parrots, and other animals, though tame and saleable, not serving for food, are not the subject of larceny at common law (*Reg.* v. *Cheafor*, Davis, 37).

By 24 & 25 V. c. 96, s. 23, any person unlawfully killing or wounding any house-dove or pigeon under such circumstances as do not amount at common law to a larceny, is liable to a penalty, on summary conviction, of £2 above the value of the bird.

The stealing of deer, hares, and coneys, will be included in the subsequent chapter on the *Game Laws*.

STEALING OR DESTROYING FISH.

By 24 & 25 V. c. 96, s. 25, if a person unlawfully and wilfully take and destroy any fish in any water which shall run through, or be in *any land belonging to the dwelling-house* of any person being the owner of such water, or having a right of fishery therein, every such offender shall be guilty of a misdemeanour; and if any person take or destroy, or *attempt* to take or destroy, any fish in any water, not being as aforesaid, but which shall be *private property*, or in which there shall be any private right of fishery, every such offender shall forfeit, over the value of the fish, any sum not exceeding £5, as to the convicting justice shall seem meet. Nothing in this section extends to persons *angling* between the beginning of the last hour before sunrise, and the expiration of the first hour before sunset; but persons angling in the daytime, in water of the

first description, are made subject to a penalty of £5; or in water of the second description, to a penalty of £2.

Persons found ANGLING, against the provisions of this act, the owner of the ground, water, or fishery, or his servant, may demand the fishing implements of the offender; and if he refuse to deliver them, they may be seized for the use of the owner of the ground: but persons whose implements are so seized, are excused from the payment of any penalty or damage, s. 25.

STEALING FROM OYSTER BEDS.

If any person steal any oysters or oyster-brood from any oyster-bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, every such offender shall be deemed guilty of larceny; and if any person shall unlawfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any such oyster-fishery, for the purpose of taking oysters or oyster-brood, although none shall be actually taken: or shall, with any net, instrument, or engine, drag upon the ground or soil of any such fishery,—every such person shall be deemed guilty of a misdemeanour, punishable by fine or imprisonment, or both; such fine not to exceed £20, and such imprisonment not to exceed three months: but nothing shall prevent any person from catching or fishing for any *floating fish* within the limits of any oyster-fishery, with any net, instrument, or engine adapted for taking floating fish only, s. 26.

STEALING FROM MINES OR FIXTURES.

By 24 & 25 V. c. 96, ss. 38 & 39, if a person steal, or sever, remove, or conceal, with intent to steal, the ore of any metal, or any lapis calaminaris, manganese, or mundick, or any wad, black cawke, or black lead, or any coal or cannel coal from any mine, bed, or vein, such offender is punishable with imprisonment for any term not exceeding two years, with or without hard labour or solitary confinement.

A like punishment if a person steal, or rip, cut, or break, with intent to steal, any glass or woodwork, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, made of any other material, belonging to, or fixed to, any building, or anything made of metal, fixed in any land, being private property, or for a fence to any dwelling-house, garden, or area, or in any square, street, or other place dedicated to public use or ornament, s. 31.

STEALING TREES OR SHRUBS.

By s. 32, if a person steal, cut, break, root-up, or otherwise destroy or damage, with intent to steal, any tree, sapling, shrub, or underwood growing in a *park*, *pleasure-ground*, *garden*, *orchard*, or *avenue*, or *in any ground belonging to any dwelling-house*; every

such offender, in case the value of the article stolen, or injury done, amount to £1, is punishable with penal servitude for three years, or imprisonment not exceeding two years; or in case the article be growing *in other situations* than those mentioned, and exceed the value of £5, the offender is liable to the same punishment.

Stealing, &c., any of the last-mentioned articles, *wheresoever growing*, to the value of ONE SHILLING, the offender shall, over and above the value of the article or amount of injury done, forfeit, for the *first offence*, not exceeding £5; for a *second*, be committed to hard labour in the house of correction for any time not exceeding twelve months, and whipping be inflicted if the conviction be before two magistrates; for a *third* offence, the offender is punishable with penal servitude for three years, or imprisonment not exceeding two years, s. 33.

STEALING FENCE, STILE, OR GATE.

By s. 34, if a person steal, cut, break, or throw down, with intent to steal, any part of a live or dead fence, or any wooden post, pail, or rail, used as a fence, or any stile or gate; the offender, for a *first* offence, above the value of the article shall forfeit not exceeding £5; for a *second* offence, be committed to hard labour for not exceeding twelve months.

If the whole or part of a tree, sapling, or shrub, or any live or dead fence, post, pale, rail, stile, or gate, of the value of 1*s.* at the least, *be found in the possession* of any person, or on his premises, with his knowledge, and such person is unable to satisfy a justice that he came lawfully by the same, he may, above the value of the article, be convicted in the forfeiture of any sum not exceeding £2, s. 35.

STEALING FROM GARDENS OR ORCHARDS.

By s. 36, if a person steal, destroy, or damage with intent to steal, any plant, root, fruit, or vegetable production growing in any *garden*, *orchard*, *nursery-ground*, *hothouse*, *greenhouse* or, *conservatory*, every such offender shall, at the discretion of the justice, either be committed to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else pay, over and above the value of the article stolen, or the amount of the injury done, any sum not exceeding £20. On a *second* conviction, the offender is liable to penal servitude for three years, or imprisonment not exceeding two years.

If a person steal, destroy, or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, distilling, or dyeing in any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, or nursery-ground, every such offender may be committed, either with or without hard labour, for not exceeding one month, or above the

value of the article stolen or injured, pay not exceeding 20*s*. On a *second* conviction, the offender may be imprisoned six months, with or without hard labour, s. 37.

STEALING FROM GRAVES.

It has been before observed, that no law renders stealing or taking a dead body a theft. Unless there be some property in the thing taken, and an owner, no theft can be committed; yet if the owner be unknown, provided there be a property, it is larceny to steal it. This is the case of stealing a shroud out of a grave, which is the property of those who buried the deceased; but stealing the body itself, which has no owner, is not felony, unless some of the grave-clothes be taken. But it is an offence *not to bury a dead body;* and, in *Rex* v. *Young*, the master of a workhouse and a surgeon were convicted of a conspiracy to prevent the burial of a person who died in the workhouse. And in *Rex* v. *Cundick*, the defendant was found guilty of a misdemeanour for not having buried the body of an executed felon, entrusted to him by the gaoler for that purpose, *Surrey Spring Assizes*, 1822. The possession of a body for the purpose of dissection by a licensed anatomist is rendered lawful by 2 & 3 W. 4, c. 75.

CHAPTER XVII.

Robbery.

THE crime of robbery is a species of theft, aggravated by the circumstance of a taking of the property from the person, or whilst it is under the protection of the person, by means either of violence or putting in fear.

Formerly the offence seems to have been confined to cases of *actual* violence to the person; but, in latter times, it has been extended to constructive violence by putting in fear, and not only to cases where property has been taken and delivered under the threat of bodily violence to the party robbed, or some other person, but also where the fear has resulted from the apprehension of violence to the habitation or property, or has been occasioned by threat of preferring a charge of an infamous crime.

To constitute robbery there must be a *forcible* taking, but any or the least degree of force which inspires fear is sufficient. The value of the article taken is immaterial; a penny as much as a pound, forcibly extorted, makes a robbery.

It must be a taking from the *person*, as a horse whereon a man is riding, or money out of his pocket; or else *openly* and before his face, as if a thief, having first assaulted me, takes away my horse that is standing by me, or having put me in fear, drives away my cattle:

Actual violence to the person, or exciting fear in the mind, is not always necessary to constitute a robbery. For if a man, with cutlass under his arm, or pistol, demand and obtain the money of another without touching the person, it is robbery, though there is no consciousness of fear in the party robbed, only an apprehension or expectation that violence will be resorted to if the robber be refused or resisted.

A snatching or taking of property suddenly or unawares from the person, without some actual injury to the person, is not a sufficient degree of violence to constitute robbery.

If violence be used it is sufficient to constitute robbery, although it be used under the colour of executing legal process, or other lawful authority.

Having endeavoured shortly to describe the nature of robbery, we come next to the statute law by which the offence is punished, and which has been consolidated and amended by 24 & 25 V. c. 96. By s. 40, whoever shall rob any person or steal any chattel, money, or valuable security, from the person of another, shall be guilty of felony, liable, at the discretion of the court, to be kept in penal servitude for any term not exceeding fourteen, nor less than three years, or imprisoned for not exceeding two years, with or without hard labour, or solitary confinement.

On trial for robbery, jury may convict of an assault with *intent* to rob, s. 41. By s. 42, to assault any person with intent to rob is punishable by penal servitude for three years, or imprisonment for any term not exceeding two years, with or without hard labour, or solitary confinement.

By s. 43, whoever shall, being *armed with any offensive weapon* or *instrument*, rob, or assault with intent to rob, any person, or shall, together with one or more, rob, or assault with intent to rob, any person, or shall rob any person, and at the time of, or immediately *before* or *after*, such robbery, shall wound, beat, strike, or use any other personal violence to any person, shall be liable to penal servitude for life, or for not less than three years, or to be imprisoned for not exceeding two years. The latter description appears to include the novel atrocity, lately so frequent, of *garotting*.

Section 43 was amended by 24 & 25 V. c. 100, and extended to an attempt to choke, suffocate, or strangle, so as to render a person insensible or incapable of resistance, with intent to commit an indictable offence. To the punishment awarded by these acts for *garotting* has been added, by 26 & 27 V. c. 44, that of being, if a male, once, twice, or thrice privately whipped, subject to the following conditions :—If the offender is under 16 years of age, the number of strokes at each whipping not to exceed 25, and to be inflicted with a birch rod ; in case of other male offenders, the strokes not to exceed 50 at each whipping. In each sentence the court to specify the number of strokes, and the instrument to be

used. Whipping to be inflicted within six months from sentence, and prior to penal servitude, if such has been awarded.

By 24 & 25 V. c. 96, s. 44, whoever shall send, deliver, or utter any *letter* or *writing*, demanding of any person, with *menaces*, and without reasonable cause, any money or valuable thing, is liable to penal servitude for life, or not less than three years, or to imprisonment for not above two years, with or without hard labour or solitude: if a male under sixteen years of age, whipping may or may not be added. Demanding property, with menaces, or by force, with intent to steal, is punishable by penal servitude for three years, or imprisonment for two years, s. 45. To send or deliver a letter or writing, threatening to accuse of any crime now punishable with death or penal servitude for not less than seven years, is liable to penal servitude for life, or not less than three years, or imprisonment for not less than two years, s. 46. A like punishment for threatening to accuse of an infamous crime, or any other crime here described; or to induce, by violence or threats, to sign any deed or document, ss. 47, 48. S. 49 adds that "it shall be immaterial, whether the menace or threats before mentioned be of violence, injury, or accusation to be caused or made by the offender or any other person."

CHAPTER XVIII.

Malicious Injuries to Property.

THIS class of offence is characterized by malice as contradistinguished from fraud. They consist of injuries done to public or private property, not for the purpose of theft, but from wantonness or ill-will, or mischievous design to violate the law. It is not necessary, however, that *malice* should appear—that is presumed from the injury inflicted; and it lies on the party indicted to rebut the presumption of evil intention, or sufficiently explain the act of which he is accused. As the crime is one that is often hard to prevent or discover, it is, although in general only a trespass at common law, made by recent statutes highly penal, and the punishment proportioned to the magnitude of the damage caused, and the difficulty, from the peculiar nature of the property, its unavoidable exposure or otherwise, of guarding against the perpetration of the injury.

The 24 & 25 V. c. 97, passed in 1861, consolidates and amends the statute law of England and Ireland relating to malicious injuries to property. As to punishments under this act, when imprisonment, with or without hard labour, is awarded for any indictable offence, the court may sentence the offender to be imprisoned, or imprisoned and kept to hard labour in the common gaol or house of correction. If solitary confinement forms part of

the sentence, the offender may be kept in solitude not exceeding one month at any one time, and not exceeding three months in any one year. If whipping forms part of the sentence, the offender may be *once* privately whipped, but the number of strokes, and the instrument to be used, must be specified in the sentence, ss. 74, 75.

Under the act, from s. 1 to s. 4 inclusive, the following are felonious offences, namely :—Unlawfully and maliciously setting fire to any church, chapel, or other place of divine worship; setting fire to a dwelling-house, any person being therein; setting fire to a house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, barn, storehouse, granary, hovel, shed, or fold, or to any farm-building, or erection used in farming land, or in carrying on any trade or manufacture, with intent to injure or defraud any person; setting fire to any railway station, engine-house, or other building appertaining to any railway, port, dock, or harbour, or to any canal or other navigation. All these offences are punishable by penal servitude for life, or any term not less than three years, or by imprisonment for not exceeding two years, with or without hard labour; and, if a male under sixteen years, with or without whipping.

By s. 5, the same punishment is annexed to setting fire to any public building, in any county, city, borough, or poor-law union, or any university, college, hall, inn of court, or any building intended for public use or ornament, or maintained by public subscription or contribution.

Setting fire to any other building than those mentioned is felony, punishable by penal servitude for fourteen, or not less than three, years, or imprisonment not exceeding two years, with or without hard labour; or once whipping, if a male under sixteen years of age, s. 6. Setting fire to any matter or thing, in, against, or under any building, the setting fire to which is felony, subjects to a like punishment of penal servitude, imprisonment, or whipping, s. 7. A like punishment for any overt act, or attempt to set fire to such building, or any goods therein or about, s. 8.

Destroying or damaging by gunpowder, or other explosive substance, a dwelling-house, any one being therein, or any building whereby life is endangered, is felony, liable to penal servitude for life, or not less than three years, or imprisonment not above two years, with or without hard labour, solitude, or whipping, s. 8. The attempt to destroy or damage, by any explosive substance, any building, machinery, working tools, fixture, or chattel, whether the explosion take place or not, is punishable by penal servitude for not exceeding fourteen, nor less than three years, or imprisonment, with or without hard labour, solitude, or whipping, s. 10.

Injuries to Animals.—By s. 40, if any person unlawfully and

maliciously kill, maim, or wound any *cattle*, he is punishable with penal servitude for fourteen, or not less than seven, years, or imprisonment for not above two years, with or without hard labour or solitude. By 7 & 8 G. 4, c. 30, upon which this section of the 25 V. is framed, cattle includes horses, colts, asses, and pigs. By s. 41, to unlawfully kill, maim, or wound, any dog, bird, beast, or other animal, not being cattle, but the subject of larceny at common law, or being ordinarily kept in confinement for any domestic purpose, is punishable by imprisonment, not above six months, or a fine not above £20. For a *second* offence, hard labour, and not exceeding twelve months' imprisonment, may be awarded by the convicting justice.

Cruelty to Animals.—By 12 & 13 V. c. 92, s. 2, if any person cruelly beat, ill-treat, over drive, abuse, or torture, or cause to be so ill treated, any animal, every such offender, for every such offence, shall forfeit not exceeding £5. Any person who shall keep or use, or act in the management of any place for the purpose of *fighting* or *baiting* any bull, bear, badger, dog, cock, or other kind of animal, whether of a domestic or wild nature, is liable to a penalty not exceeding £5 for every day; as also any person who suffers any place to be so kept or used. Offenders by ill-treating animals, occasioning injury to them, or to any other persons or property, must compensate to any amount a justice shall think fit, not exceeding £10, s. 4. Cattle *impounded* must be supplied with a sufficient quantity of fit and wholesome food and water, under a penalty of 20*s*. The use of carts drawn by dogs within the limits of the metropolis is prohibited by 2 & 3 V. c. 47. For removing certain doubts on these acts, the 17 & 18 V. c. 60, enacts that all persons who have impounded animals, or may do so hereafter, and have provided food for them, are entitled to recover their expenses, and are empowered to sell animals after being impounded seven days. The provision of 2 & 3 V. c. 47, prohibiting the use of carts drawn by dogs in the metropolis, is extended to all parts of the United Kingdom.

Damaging Manufactures or Machinery.—By 24 & 25 V. c. 97, s. 14, unlawfully and maliciously to cut, break, or damage any article containing *silk*, *woollen*, *linen*, *cotton*, *hair*, *mohair*, or *alpaca;* or any framework-knitted piece, stocking, hose, or lace, being in the *process of manufacture;* or any loom, frame, machine, engine, rack, tackle, or implement, employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing such goods or articles; or by force enter any house, shop, building, or place, with intent to commit any of these offences, subjects to penal servitude for life, or not less than three years, or imprisonment not above two years, with or without hard labour, solitude, or whipping. Destroying *threshing*, or *any other machinery than mentioned*, or any engine or implement used in sowing, reaping, mowing, draining, or other agricultural or manufacturing

operation, subjects to penal servitude for not above seven, nor less than three, years, or imprisonment not above two years, with or without hard labour, solitude, or whipping, s. 15.

Firing or Damaging Mines.—By s. 26, whoever maliciously sets fire to any mine of coal, or other mineral fuel, is liable to penal servitude for life, or not less than three years, or imprisonment not above two years, with or without hard labour or whipping. Attempting to commit such offence is punishable with fourteen or three years' penal servitude, or imprisonment not above two years, s. 27.

If a person cause water to be conveyed into a mine, or into a passage communicating therewith, with intent to destroy or damage such mine, or to hinder the working; or, with the like intent, pull down or obstruct any airway, waterway, drain, pit, level, or shaft, belonging to a mine, the offender is liable to penal servitude for seven or three years, or imprisonment not above two years. But this does not apply to damage unavoidably committed in working any neighbouring mine. The offender is subject to a like punishment for destroying any steam or other engine for sinking, draining, or working a mine; or any staith, building, or erection used in conducting the business of a mine, or a bridge, waggonway, or trunk, for conveying minerals, whether such engine or work be completed, or in an unfinished state, s. 29.

Setting Fire to Ships.—By s. 18, if a person set fire to or in any wise destroy any ship or vessel, whether the same be complete or in an unfinished state; or set fire to, cast away, or in any wise destroy any ship or vessel, with *intent to prejudice the owner or underwriter*, or injure any goods on board the same, the offence is felony, subject to penal servitude for life, or not less than three years, or imprisonment not above two years, with or without hard labour or solitude. A like punishment for impeding any person endeavouring to escape from shipwreck, s. 17. Hanging out false lights to cause the shipwreck of any vessel, is punishable with penal servitude for life or not less than three years, or imprisonment for not above two years. Damaging a ship or vessel, *otherwise than by fire*, subjects the offender to penal servitude for seven or three years, or imprisonment not above two years.

Injuries to Sea-Banks and Canal Works.—By s 30, if unlawfully a person break down any sea-bank, or the bank of any river, canal, or marsh, whereby lands are overflowed, damaged, or endangered; or destroy any lock, sluice, flood-gate, or other work on any navigable river or canal; every such offender shall be guilty of felony, [illegible] to penal servitude for life or three years, or imprison[illegible] years, with or without hard labour, solitude, or

[illegible] any pile, chalk, or other material, used for [illegible] or the bank of any river, canal, or marsh, [illegible] or do any injury to a navigable river or

canal, with intent to obstruct the carrying on, completing, or maintaining the navigation; such offender is liable to penal servitude for seven or three years, or imprisonment not above two years.

Persons destroying or injuring any *public bridge*, so as to render it dangerous or impassable, are subject to penal servitude for life, or seven years, or imprisonment for two years.

Turnpike-gate or Toll-house.—If a person destroy or injure any turnpike-gate, or any wall, chain, rail, post, bar, or fence, or any house or weighing-engine connected therewith, he is guilty of a misdemeanour, liable to fine or imprisonment, or both, s. 34.

Injuries to Railway Carriages.—By 24 & 25 V. c. 97, s. 35, whoever shall unlawfully place or throw upon a railway any wood, stone, or other matter, or take up or displace a rail, sleeper, or other thing belonging to a railway, or move or divert any points or other machinery, or show, hide, or remove any signal or light of any railway; or do, or cause to be done, anything with intent to *obstruct*, injure, or destroy any engine, tender, carriage, or truck, shall be guilty of felony, liable to penal servitude for life or not less than three years, or imprisonment for not exceeding two years, with or without hard labour or whipping.

If a person, by wilful omission or neglect, obstruct, or cause to be obstructed, any engine or carriage using a railway, or assist therein, he is liable to be imprisoned for not exceeding two years, with or without hard labour, s. 36.

Injuries to Electric or Magnetic Telegraph.—Maliciously to cut, break, throw down, destroy, injure, or remove any battery, machinery, wire, cable, post, or other thing, being part of or employed about any electric or magnetic telegraph, or in its working, or obstruct in any manner the conveyance of any communication by such telegraph, the offender is liable to be imprisoned for not exceeding two years, with or without hard labour. Prosecution may be either by indictment, or, if more conducive to the ends of justice, a justice of peace may summarily hear and determine, and the offender either be imprisoned only, or be imprisoned with hard labour for not exceeding three months, or forfeit and pay such sum, not exceeding £10, as to the justice seems meet, s. 37. Any attempt to injure such telegraphs subjects either to imprisonment for not exceeding three months or to a penalty not above £10, s. 38.

Injuries to Works of Art.—By s. 39, whoever shall unlawfully destroy or damage any book, manuscript, picture, print, statue, bust, or vase, or any other article kept for the purposes of art, science, or literature, or as an object of curiosity, in any museum, gallery, cabinet, library, or other repository, the same being either occasionally or at all times open for the admission of the public, or of any considerable number of persons to view the same, either by the permission of the proprietor or by the payment of money before entering; or any picture, statue, monument, or other memorial of

the dead, painted glass, or other ornament of work of art, in any church, chapel, meeting-house, or other places of divine worship, or in any building belonging to the Queen, or to any county, riding, division, city, borough, poor-law union, parish, or place, or to any university, college, or hall of any university, or to any inn of court, or in any street, square, churchyard, burial-ground, public garden, or ground, or any statue or monument exposed to public view, or an *ornament*, *railing*, or *fence* surrounding such statue or monument; the offender is guilty of a misdemeanour, and, upon conviction, liable to be imprisoned for not exceeding six months, with or without hard labour or whipping, if a male under the age of sixteen years. But such punishment not to affect the right of any person to recover, by action, damage for the injury so committed.

Fish-pond or Mill-dam.—To destroy the dam of any fish-pond, or any water which is private property, or in which there is any private right of fishery, *with intent to destroy the fish*; or to put any lime or other noxious material in any pond or water, with similar intent; or to destroy the dam of any mill-pond, subjects the offender to penal servitude for not exceeding seven years, or imprisonment, with or without whipping, for not above two years, s. 32.

Burning or Destroying Agricultural Produce.—By 24 & 25 V. c. 97, s. 17, whoever shall unlawfully set fire to any stack of corn, *grain*, pulse, tares, straw, haulm, stubble, furze, heath, fern, hay, turf, peat, coals, charcoal, wood, or steer of wood, he is punishable with penal servitude for life or not less than seven years, or imprisonment not above two years, with or without hard labour, solitude, or whipping. *Grain* is specified. Flax, with seed in it, may be grain (*Reg.* v. *Spencer*, Davis, 130).

Setting fire to any crop of hay, grass, corn, grain, pulse, or of any cultivated vegetable produce, whether standing or cut down, or any part of any wood, coppice, or plantation of trees, is penal servitude for fourteen, or not less than three, years, or imprisonment for two years, with or without hard labour, solitude, or whipping, s. 16.

Maliciously *attempting* to set fire, by an overt act, to any matter or thing, as in the two preceding sections, would be felony, subject to penal servitude for seven, or not less than three, years, or imprisonment for not above two years, s. 18.

By s. 19, whoever shall maliciously cut or otherwise destroy any *hopbinds* growing on poles, is punishable by penal servitude for fourteen, or not less than three, years, or imprisonment for two years.

Destroying Trees or Shrubs.—If a person maliciously cut, break, bark, root up, or otherwise destroy or damage the whole or any part of any tree, sapling, shrub, or underwood, growing in any *park*, *pleasure-ground*, *garden*, *orchard*, or *avenue*, or *in any ground belonging to any dwelling-house*; every such offender, in

case the amount of the injury done exceed the sum of £1, is liable to penal servitude for three years, or imprisonment not above two years, with or without hard labour, solitude, or whipping. Persons are made liable to the same punishment who injure, in like manner, any tree, shrub, &c., growing in *any other situation* than a pleasure-ground, if above the value of £5.

If a person maliciously cut, break, bark, root up, or otherwise destroy or damage any tree, sapling, shrub, or underwood, *wheresoever growing*, the injury being done to the amount of ONE SHILLING at the least, he shall, on conviction before a justice of the peace, for the *first* offence, be either imprisoned and kept to hard labour for not above three months, or pay, over and above the amount of the damage for the injury done, any sum not exceeding £5, as the justice thinks meet; for a *second* offence, be committed to hard labour for not exceeding twelve months; and if such second conviction be before two justices, they may order the offender to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction; for a *third* offence, the offender may be imprisoned for any term not exceeding two years, with or without hard labour, solitude, or whipping if under sixteen years of age, s. 22.

Destroying Fruit or Vegetables.—Persons maliciously destroying or injuring any plant, root, fruit, or vegetable production, in any *garden*, *orchard*, *nursery-ground*, *hothouse*, *greenhouse*, or *conservatory*, may, on conviction before a justice of the peace, be imprisoned, with or without hard labour, for any term not exceeding six months, or else pay, over and above the amount of the injury done, any sum not exceeding £20; a *second* conviction is felony, subject to penal servitude for three years, or imprisonment, with hard labour, for not above two years, s. 23.

If any person destroy, or damage with intent to destroy, any cultivated root or plant used for the food of man or beast, or for medicine, distilling, or dyeing; or for or in the course of any manufacture, and growing in any land, open or inclosed, *not being a garden*, *orchard*, or *nursery-ground;* every such offender, being convicted before a justice of the peace, shall be committed, with or without hard labour, for not exceeding one month, or else pay, over and above the amount of the injury done, any sum not exceeding 20*s*. Persons convicted a *second* time may be imprisoned, with or without hard labour, for not exceeding six months, s. 24. But, on a first conviction, the justice may discharge the offender, on his satisfying the aggrieved party for damage and costs, or either of them, s. 66.

Destroying Wall, Fence, or Gate.—Persons maliciously destroying or damaging any fence, wall, stile, or gate, shall, for a *first* offence, pay, over and above the amount of the injury done, any sum not exceeding £5; for a *second* offence, be committed to hard labour for any term not exceeding twelve months, s. 25.

Injuries by Tenants.—By s. 13, if the tenant of any dwelling-house or other building, or of part thereof, held for years or at will, or held over, maliciously pull down or demolish, or begin to do so, any part of such holding, or to sever from the freehold any fixture, he is guilty of misdemeanour, punishable by fine or imprisonment.

Malicious Injuries of other Description.—The 24 & 25 V. c. 97, s. 51, enacts that unlawfully to commit any damage, injury, or spoil, upon any real or personal property whatever, either of a public or private nature, to an amount exceeding £5, is a misdemeanour, punishable by imprisonment not above two years; in case the offence is committed between the hours of nine in the evening and six in the morning, the offender is liable to penal servitude for not exceeding five years, or imprisonment not above two, with or without hard labour.

By s. 52, if a person wilfully or maliciously commit any damage, injury, or spoil, to or upon any real or personal property, either of a public or private nature, for which no punishment is provided, the offender shall pay such sum of money as appears to the justice to be a *reasonable compensation* for the injury done, not *exceeding* £5; and, in default of payment, together with costs, the offender may be committed, with or without hard labour, for not exceeding two months. But this provision does not apply where the party trespassing acted under a reasonable supposition that he had a right to do the act complained of; nor to any trespass, not being wilful or malicious, committed in hunting, fishing, or in the pursuit of game.

By s. 54, making or having *gunpowder* or any noxious thing, or any dangerous machine or instrument for the commission of any felony under the act, is punishable with imprisonment for not more than two years, with or without hard labour or solitude.

A person loitering in any highway, road, or other place, in the night, suspected of any felony against the statute, may, without warrant, be taken into custody by a constable or peace-officer, s. 57.

CHAPTER XIX.

Game Laws and Laws relating to Salmon.

GAME is still deemed of sufficient importance to be subject to special legislation, different from property, or of other animals, either wild or domesticated; and is defined to include hares, pheasants, partridges, grouse, heath or moor game, black game, and bustards. Before giving an analysis of the Game Act, the 1 & 2 W. 4, c. 32, for improving the law on this subject, and which repealed former enactments from 13 R. 2, to 59 G. 3, it will be useful to notice the more important alterations that statute in-

troduced, and by which almost the last remnant of the forest laws, which had long formed a topic of popular animadversion, has been yielded up to the advancing spirit of the age.

First, no *qualification* of rank or property is required; every person who has obtained a game certificate is authorized to kill game on his own land, or on that of another person, with the leave of the person entitled to the game, subject to the ordinary prosecutions for trespass, to which *qualified* persons were liable, before the passing of the act.

Game is made *saleable* by taking out an annual license.

The lord of the manor is not restricted to the appointment of one gamekeeper, as formerly, but may appoint several for the same manor.

Prior to this act, the occupier of land, if qualified, might sport over his grounds, and give permission to others to do the same, unless the right to kill game had been reserved to the landlord; but these immunities are now transferred to the landlord; except in cases which will be subsequently mentioned.

The penalties imposed for offences are recoverable on a summary conviction before *two* justices, except in the case of trespass, in which, with a view to the more speedy liberation of the party arrested, the power of conviction is given to a single magistrate.

An appeal to the quarter sessions is allowed against all convictions, but no certiorari. Under the old acts, the power of conviction was given to a *single* justice without any appeal, and no certiorari allowed for removing the proceedings under any of the leading acts, except upon onerous conditions.

We shall next proceed to give a digest of the Game Act, and also of other acts relative to game certificates, and for the preservation of deer and coneys, and the prevention of night-poaching, which, though not included in the act, have been always considered to form part of the Game Code. The word "game" will be used in the sense defined above by the statute, which does not include snipes, woodcocks, quails, landrails, coneys, &c.; though these are subject by the Certificate Act to legal regulation, as to the season of sporting. The following will be the order of our subjects:—

1. *Seasons and Days of Sporting.*
2. *Game License and Certificate.*
3. *Trespassers in Pursuit of Game.*
4. *Seizing Game on the Person.*
5. *Poaching, Deer, Hares, Rabbits, and Pigeons.*
6. *Destroying Eggs of Game.*
7. *Rights of Landlords and Tenants.*
8. *Powers and Duties of Gamekeepers.*
9. *Licenses to sell Game.*
10. *Privileges of Forests, Chases, Warrens, and Parks.*
11. *Laws relating to Salmon.*

I. SEASONS FOR KILLING GAME.

Any person that shall kill or take game, or use any dog, gun, net, or other engine for these purposes, on a Sunday or Christmas-day, shall, on conviction before two justices, forfeit not exceeding £5, with costs. Any person killing or taking any *partridge*, from the 1st of February to the 1st of September; or *pheasant*, from the 1st of February to the 1st of October; or *black game*, between the 10th of December and the 12th of August (or the 1st of September, in the counties of Somerset and Devon, and the New Forest); or *grouse*, between the 10th of December and the 12th of August; or *bustard*, between the 1st of March and the 1st of September,—shall, on conviction before two justices, forfeit, for every head of game, not exceeding 20*s.* with costs. Any person laying *poison* with intent to destroy game, to forfeit not exceeding £10, 1 & 2 W. 4, c. 32, s. 3.

Any licensed dealer buying, or selling, or having in his possession, any *bird of game*, ten days after the expiration of the season; or any person, not licensed to deal in game, buying or selling within such days, or having in his possession, any bird of game (except in a mew or breeding-place), after forty days, shall, on conviction, forfeit, for every head of game, not exceeding 20*s.* with costs, s. 4.

As "bird of game," not *hares*, is mentioned, it can be no offence in any licensed dealer to buy, sell, or have in possession hares at *any time;* and no offence in any unlicensed person to buy of a licensed dealer, or have in possession, hares at any time.

Though hares are included in the definition of "game," no time is fixed within which they ought not to be killed; neither is there any limitation as to the time when rabbits or wild-fowl may be killed.

II. GAME LICENSE AND CERTIFICATE.

Although the Game Act abolished qualifications to kill game, it made no alteration in the law relative to certificates; the duties and penalties pertaining to these were repealed, in 1860, by 23 & 24 V. c. 90, and, in lieu, duties on excise licenses to kill and deal in game imposed. By s. 2,—

	£	s.	d.
For a license in Great Britain or a certificate in Ireland, to be taken out by every person using a dog, gun, net, or other engine for taking or killing any game whatever, or any woodcock, snipe, quail, landrail, or any coney, or any deer, or assisting therein—if taken out after April 5 and before Nov. 1, to expire on April 5 of the following year	3	0	0

	£	s.	d.
If to expire on October 31 of the same year .	2	0	0
If taken out after Nov. 1, to expire on April 5 following	2	0	0
Any person entitled to kill game on any lands in England or Scotland, may authorize any servant to kill game on the same lands, on payment of a duty of .	2	0	0
To deal in game in England, Scotland, or Ireland .	2	0	0
Gun license (under 33 & 34 V. c. 57)	0	10	0

The duties are placed under the Commissioners of Inland Revenue, and are subject to the regulations and powers for enforcing penalties of the Excise acts. Any person killing any of the aforesaid kinds of game before taking out a license incurs a penalty of £20. The exceptions are: taking of woodcocks in nets or springes in Great Britain; taking or destroying coneys in Great Britain by the proprietor of a warren or of any inclosed land, or by the tenant, or by their permission or direction; the coursing of hares by greyhounds or by hunting with beagles or other hounds; the hunting deer with hounds; and the shooting or taking of deer in inclosed lands by the owner or occupier, or by his direction or permission. The exemptions are: any of the royal family; any person appointed as gamekeeper by the Commissioners of Woods and Forests; any person aiding or assisting another person holding a license to kill game and using his own gun or net, who is not acting by virtue of any deputation or appointment; and all persons, as regards hares, who are now authorized to kill hares in England and Scotland, without a game certificate, ss. 4, 5.

Holders of game certificates are not exempt from the law of trespass, and are also liable to penalties for killing or taking partridges before the 1st day of September, or pheasants before the 1st day in October of the current year of the license, and after the 14th of February following. Hares may be killed at any time with license. Heavy penalties attach to persons sporting without a game certificate, in addition to a double charge thereof. License taken out for assessed servant or person acting as gamekeeper is to be available to his successor for the remainder of the term, but the alteration must be notified, and the new name, place of abode, &c, endorsed on the license; such license, however, not to be available for acts out of the limits of the manor or land stated. All persons pursuing game must, on demand, produce their license, or declare their names, places of residence, and the place where the license was taken out, under a penalty of £20. The commissioners are to publish lists of persons licensed to kill game. Licenses and certificates to kill or deal in game are to be granted at the chief offices of Inland Revenue in London, Edinburgh, and Dublin, by the supervisors in their respective districts, and such officers as the

commissioners appoint. No holder of a game licence need take out a gun licence.

Every certificated person is subject to the law of trespass in the pursuit of game on another's ground, s. 6. By the 11 & 12 V. c. 29, and c. 30, the owner or actual occupier of inclosed lands, having the right of killing game thereon, by himself or any person authorized by him in writing, according to prescribed form, to hunt hares on such inclosed land without taking out a game certificate. By s. 4, any person may join in hunting or coursing of hares without a game certificate, but it does not extend to the laying poison for them, or to the shooting hares at night.

III. TRESPASSES IN PURSUIT OF GAME.

Any person trespassing on land in the *daytime*, in pursuit of game, woodcocks, snipes, quails, landrails, or conays, to forfeit not exceeding £2, with costs; if one or more persons together commit such trespass, each to forfeit not exceeding £5; but the offender may urge any matter in defence which would have been a defence to an action of trespass; except that the leave of the occupier of the land would not be deemed a sufficient defence where the landlord has the right of killing the game, 1 & 2 W. 4. c. 32. s. 30.

The person having the right of killing the game, or the occupier of the land, or gamekeeper, or other person authorized by either of them, may require a person so found trespassing to quit the land forthwith, and to tell his name and abode: and in case of a refusal or in case such person continue or return on the land, the party requiring, and any person in his aid, may apprehend the offender and take him before a justice; and such offender to forfeit not exceeding £5, with costs; but the party arrested must be discharged unless brought before a justice within twelve hours, in which case he may be proceeded against by summons or warrant, s. 31.

Where five or more persons together, so trespassing, any of them being armed with a gun, shall, by violence or menace, prevent any authorized person from approaching them for the purpose of requiring them to quit the land, or to tell their names and abodes, every person so offending, or aiding, to forfeit not exceeding £5, in addition to any other penalty, with costs, s. 32.

Any person trespassing in the daytime on the Queen's forests, in pursuit of game, to forfeit not exceeding £2, s. 33.

Daytime to be deemed from one hour before sunrise to one hour after sunset, s. 34.

These provisions as to trespassers do not extend to persons hunting or coursing, nor to persons claiming a right of free warren, nor to lord of manor or his gamekeeper. Neither does the act preclude any action of trespass; but no double proceeding can be had, and a proceeding under the statute is a bar to an action.

IV. SEIZING GAME ON THE PERSON.

If any person be found by day or night on any land in search of game, and having in his possession any game which "*appear* to have been *recently* killed," the person having the right of killing the game, or the occupier (whether or not he have such right by reservation or otherwise), or any gamekeeper or servant of either of them, may demand such game, and *seize* it, if not immediately delivered up, 1 & 2 W. 4, c. 32, s. 36. As "game" only is mentioned, woodcocks, snipes, quails, landrails, or coneys, cannot be so seized.

V. POACHING DEER, HARES, RABBITS, AND PIGEONS.

Deer.—By 24 & 25 V. c. 96, s. 12, whoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the *uninclosed* part of any forest, chase, or purlieu, shall, on conviction before a justice, pay not above £50. A *second* conviction is felony, liable to imprisonment for any term not exceeding two years, with or without hard labour, solitude, or whipping if a male under sixteen years of age. A like offence committed in the *inclosed* part of any forest or land is felony, subject to a like term and conditions of imprisonment as *second* offence committed in uninclosed ground, s. 13.

By s. 14, suspected person found in possession of any venison, snare, or engine for taking deer, and not giving a satisfactory account how he came in possession of such, may be sentenced to pay any sum not exceeding £20. Setting engines for deer, or pulling down fences, or resisting the keepers, punishable by fine or imprisonment for two years. Deerkeepers and their assistants may seize the gun, snare, or dogs, if on demand offenders do not deliver them up, ss. 15, 16.

Hares and Rabbits.—By s. 17, whoever shall unlawfully and wilfully, in the *night*, between the first hour after sunset and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground used for the breeding or keeping of such, is guilty of a misdemeanour punishable by fine or imprisonment. The same offence in the *daytime* is punishable by a fine not exceeding £5. Killing rabbits on any sea-bank or river-bank of Lincolnshire, so far as the tide extends, or one furlong, are excepted from penalty or punishment.

VI. USING POISONED GRAIN OR SEED.

By an act of 1863, 26 & 27 V. c. 113, every person who offers or exposes for sale, or sells, any grain, seed, or meal, which has

been steeped or dipped in poison, or with which poison has been mixed, so as to destroy life, is liable, on summary conviction, to a penalty not exceeding £10. A like penalty to sow, cast, or place, or cause to be so done, any such poisonous ingredients. But poisonous solution or infusion for agricultural purposes allowable, s. 4. Informer, if not a constable, entitled to a moiety of penalty, and not liable if an accomplice in the offence, s. 5.

By 1 & 2 W. 4, c. 32, s. 24, if any person, not having the right to kill game on any lands, nor permission from the person having such right, shall take out of the nest, or destroy, the *eggs of any bird of game*, or of any swan, wild duck, teal, or widgeon, or shall knowingly have in his possession any such eggs so taken, such person, on conviction, shall forfeit not exceeding *5s.* with costs for every egg.

The 25 & 26 V. c. 114, empowers constables to search the person without warrant, and for the purpose of the act extends the interpretation of game to include one or more hares, pheasants, partridges, eggs of pheasants and partridges, woodcocks, snipes, rabbits, grouse, black or moor game, and eggs of grouse, black or moor game. By s. 2, any constable or peace-officer in Great Britain and Ireland, in any highway, street, or public place, may search any person whom he may have good cause to suspect of coming from any land where he shall have been unlawfully in pursuit of game, or any person aiding such person, and having in his possession any game unlawfully obtained, or any gun, part of gun, or net, or engine used for the killing or taking game; and also to stop and search any cart or other conveyance in or upon which such officer shall have good cause to suspect that any such game or article is being carried; and should there be found any game or article upon such person, cart, or other conveyance, to seize and detain the same.

VII. RIGHTS OF LANDLORD AND TENANT TO GAME.

Under any lease or agreement made prior to 1 & 2 W. 4, c. 32, the landlord has the right of entering upon the land, or of authorizing other certificated persons to enter on the land, for the purpose of killing the game; and no person occupying land under a lease for life or years, prior to the act, has the right to kill game on such land, except where such right has been granted by the lease, or where, upon the original granting or renewal of such lease, a fine has been taken, or the lease has been made for a term exceeding twenty-one years, s. 7.

No person holding land is authorized to kill the game, or to permit any other person to do so, in any case where, by deed, lease, or any written or parole contract, a right of entry has been reserved to the landlord or other person; neither does the act

essen any reservation, covenant, or agreement contained in any private act of parliament, deed, or other writing relative to game; nor prejudice the rights of any lord or owner of any forest, chase, or warren; nor of any lord of any manor, lordship, or royalty; nor of any steward of the crown; nor does it give any new interest to any owner of cattle-gates or rights of common; nor does it affect the rights of the Queen, or rights of persons derived from the crown; and the lord of every manor has the right to the game on the wastes or commons within his manor, ss. 8-10.

Where a landlord has reserved to himself the right of killing game, he may authorize other persons to enter on the lands to kill it, s. 11.

Where the landlord has the exclusive right of killing game, given by the act or otherwise, the occupier is liable to a penalty of £1, with costs, for every head of game killed by him or other person authorized by him, s. 12.

In leases granted subsequent to the act, the tenant is entitled to the game upon the land in his occupation, unless restricted by the terms of his lease. Under all leases, however granted, *previously* to the passing of the act, the landlord is entitled to the game, except in the three following cases:—1. Where the right of the game has been expressly granted to the tenant. 2. Where a fine has been paid upon the granting or renewal of the lease, which is a distinguishing test of church and college leases. 3. Where, in the case of a term for years, the lease has been granted for a term exceeding twenty-one years.

Although the landlord is entitled to the "game," he is not entitled to the woodcocks, snipes, quails, landrails, or coneys, on the land. These the tenant may kill; but he cannot give others the power to kill them.

VIII. POWERS AND DUTIES OF GAMEKEEPERS.

These form a sort of rural police in the execution of the game laws, and can only be appointed by particular persons. The lord of a hundred or wapentake cannot appoint a gamekeeper, *Doug.* 28; but the owner of a free warren may. So may the devisee of a manor in trust. And a corporation may appoint a gamekeeper, *Camb.* 457.

By 1 & 2 W. 4, c. 32, s. 13, lords of manors may appoint one or *more* gamekeepers to preserve or kill game within the manor for their own use, and authorize such gamekeepers to seize all dogs, nets, and other engines, used for killing game by uncertificated persons.

Lords of manors may depute any person to be a gamekeeper to a manor, and authorize him to kill game for his own use, or that of any other person specified in the deputation; and no person so

deputed, and not killing game for the use of the lord of the manor, shall be entered or paid for as a gamekeeper or male servant. s. 14.

Any person entitled to kill game in Wales, on lands of the yearly value of £500, which lands he is beneficially entitled to in his own right, if they are not within the bounds of a manor, or enfranchised, may appoint gamekeepers to preserve or kill game on such lands, and on the lands in Wales of any other person who, being entitled to kill the game thereon, shall by writing authorize him to appoint a gamekeeper, who shall have the power mentioned in the preceding paragraph, s. 15.

All appointments and deputations of gamekeepers must be registered with the clerk of the peace, and their powers cease on the revocation of the appointment, s. 16.

Gamekeeper may seize all guns and nets used by an uncertificated person; but he cannot seize hounds or game, 1 *Moore*, 290. And a gamekeeper cannot shoot a dog following game within manor, unless used by an uncertificated person for the purpose of killing game; though a regular park-keeper or warrener may destroy dogs pursuing *deer* or rabbits.

Except the lord or lady of the manor, justice of the peace, or gamekeeper, no other person has a right to seize dogs or guns. The owner of land cannot seize a dog for coursing a hare; nor can any private person legally shoot a dog trespassing on his lands in pursuit of game, 2 *East*, 568; but when game is started and killed by a person on another's land, the latter may seize it for his own use, his local property continuing; or the servant of a lord of a manor may seize game killed within it by an uncertificated person, for the use of the lord.

If the gamekeeper kill, shoot, or beat for game *out* of the manor, he is liable to a penalty, as if he had no deputation. But no one is justified in taking from him his dogs or gun when *out* of the limits of his lord's manor, even in the pursuit of game, 2 *Wils.* 387. A gamekeeper may be *discharged* at pleasure with previous notice, unless there be an express agreement to the contrary; and the occupation of any house he may be permitted to reside in is merely an incident in his vocation, 16 *East*, 33.

A mistaken opinion appears to have been prevalent among gamekeepers that they had a right to *carry and use firearms* for the capture of poachers. This error was corrected by Mr. Justice Bailey (Lancaster Assizes, March 23, 1827), who expressly stated that no gamekeeper had a right to firearms for any such purpose, or to fire at any poacher whatever. No proprietor of game had power to give such authority to his keeper, who might certainly take into custody any poacher, but it was at his peril to use firearms.

IX. LICENSE TO SELL GAME.

Justices may hold a special session as often as they think fit, for the purpose of granting annual licenses to deal in game; and the majority of justices assembled may grant to any person, being a householder or keeper of a shop or stall within their division, and not being an innkeeper or victualler, or licensed to sell beer by retail, nor being the owner, guard, or driver of any mail coach, or other public conveyance, nor being a carrier or higgler, nor in the employment of any of the above-named persons, a license to buy game of any person who may lawfully sell it, and to sell the same at any house, shop, or stall; every licensed person to put outside his house, shop, or stall, a board, with his Christian and surname, and the words, "Licensed to deal in Game," thereon.

Certificated persons may sell game to licensed dealers; except that gamekeepers paying a less duty than £3 13*s.* 6*d.* may not do so, otherwise than on the account, and with the written authority, of their masters.

Every licensed person annually to obtain a certificate on the payment of a duty of £2, to be in force for the same period as his license; such duty to be paid to the collectors of assessed taxes, as duties on game certificates are payable; the receipt for the duty to be free from stamp duty, and delivered on the payment of one shilling to the collector; the receipt to be exchanged for a ticket, as is done with game certificates: penalty for any licensed person dealing in game *before* he has obtained his certificate, £20.

The collectors to make out lists of persons, their names and places of abode, who have obtained annual licenses and certificates, and to show the same to any person at seasonable hours, on the payment of *one shilling:* the duties on certificates, and the penalty of £20 for dealing without a certificate, are recoverable in the same manner as duties and penalties on game certificates. Partners carrying on business at one house or shop, need only take out one license. If any licensed person is convicted of an offence against the act, his license is void. An uncertificated person selling or offering game for sale, or a certificated person selling or offering game for sale to an unlicensed person, shall forfeit for every head of game not exceeding £2, with costs. Innkeepers, without a license, may sell game purchased of a licensed dealer, for consumption in their own houses. Every person, not being licensed, buying game of an unlicensed person, shall forfeit not exceeding £5 for every head of game, with costs.

If any licensed dealer shall buy or obtain game from any person not authorized to sell it; or sell game, not having the aforesaid board affixed to his house; or fix such board to more than one house; or sell game at any other place than where the board is fixed; or if any unlicensed person shall, by fixing a board or exhi-

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X. FOREST, CHASE, WARREN, AND PARK.

[redacted]

[redacted]

[redacted]

tleman pleases to surround with a wall or paling, and to stock with a herd of deer, that is thereby made a *legal* park. To constitute it three things are requisite: 1. A royal grant thereof. 2. Inclosure by pale, wall, or hedge. 3. Beasts of a park, such as the buck, doe, &c. And when all the deer are destroyed, it can no more be accounted a park; for a park consists of *vert*, *venison*, and *inclosure;* and if it is determined in any of them, it is a total disparking, *Cro. Car.* 59, 60.

Free warren is a place privileged, by prescription or grant from the Queen, for the keeping of beasts and fowls of the warren, which are hares and coneys, partridges, pheasants, and, some add, quails, woodcocks, and water-fowl, *Terms de Ley*, 589. Twenty years' undisturbed exercise of a claim of a warren or park will afford presumptive evidence of a right in the party so enjoying it. The owner of a warren may lawfully kill any dog which is used to hurt the warren.

The rights of any forest, chase, or warren, are not affected by the Game Act. All the franchises of the description mentioned above, having their origin in the crown, may be destroyed by a reversion to the crown, or by surrender or forfeiture, in consequence of a breach of the trust upon which they were granted.

We may here mention that of late years attempts have been made to preserve sea-birds and some other sorts of wild birds. In 32 & 33 V. c. 17, by sea-birds are meant the different species of auk, bonxie, Cornish chough, coulterneb, diver, eider duck, fulmar, gannet, grebe, guillemot, gull, kittiwake, loon, marrot, merganser, murre, oyster-catcher, petrel, puffin, razor-bill, scout, sea-mew, sea-parrot, sea-swallow, shear-water, shell-drake, skua, smew, solan-goose, tarrock, tern, tystey, and willock. And by section 2, any person who kills or wounds, or attempts to do so, or to take any sea-bird, or use any boat, gun, net, or other engine for so doing, or have in his possession any sea-bird recently killed or taken, between the 1st of April and the 1st of August in any year, is liable, on conviction, to a penalty not exceeding £1 for every such bird. The section is not to apply where the bird is young and unable to fly.

35 & 36 V. c. 78, imposes a penalty of 5*s.* upon every person who shall knowingly take or kill, or who shall expose or offer for sale between the 15th of March and 1st of August in any year any of the following birds: avocet, bittern, blackcap, chiffchaff, coot, creeper, crossbill, cuckoo, curlew, dotterell, dunlin, dunbird, flycatcher, godwit, golden-crested wren, goldfinch, greenshank, hawfinch or grosbeak, hedge sparrow, kingfisher, landrail, lapwing, mallard, martin, moor (or water) hen, nightingale, nightjar, nuthatch, owl, oxbird, pewit, phalerope, pipit, plover, ploverspage, pochard, purre, quail, redpoll, redshank, redstart, robin redbreast, ruff-and-reeve, senderling, sandgrouse, sandpiper, sea-lark, shoveller, siskow, snipe, spoonbill, *stunt, stone* curlew, stone chat, stone hatch,

summer snipe, swallow, swan, swift, teal, thicknee, titmouse (long tailed), titmouse (bearded), wagtail, warbler (Dartford), warbler (reed), warbler (sedge), whaup, wheatear, whinchat, whimbrell, widgeon, wild duck, woodcock, woodlark, woodpecker, woodwren, wren, wryneck.

XI. LAWS RELATING TO SALMON.

Before finishing this chapter it will be well to notice the laws relating to the exportation and preservation of salmon. The chief act at present in force in England is 24 & 25 V. c. 109, which defines salmon as including every description, old and young, of the genus salmo. By s. 5, a penalty of £5 is imposed for the first offence, of knowingly putting, or permitting to be put, or allowing to flow into any waters containing salmon, or into any tributaries of them, any poisonous substance to such an extent as to poison the fish. By s. 8, the use of lights, or of any spear, gaff, or other like instrument; or having such lights or instruments with the intent to use them in catching of salmon, is subject to a penalty not exceeding £5, and forfeiture of the instruments; but a gaff may be used as auxiliary to angling. A penalty not exceeding £2 is imposed on any one using fish roe for the purpose of fishing; or for buying or exposing to sale, or having in possession any salmon roe, except for the purpose of artificial propagation or other scientific purposes. With respect to dams, they are not to be used unless by virtue of a grant or charter or immemorial usage; any person catching salmon in contravention of this clause incurs a penalty of £5 for each offence, and a further penalty of £1 for each salmon caught; all traps, nets, &c., in connection with the dam, and all salmon caught, are to be forfeited; all fishing weirs, even if lawful, are to have a free gap; and all fishing mill-dams must have a free pass of such form as shall be approved by the Home Office, s. 12. No person, by s. 14, is wilfully to take an unclean or unseasonable salmon; or to buy or expose for sale any such, under penalty of forfeiting the fish, and a fine not exceeding £5 for each. By s. 31, general superintendence is vested in the Home Office, which is to appoint two inspectors for three years, to define their duties, and assign them such salaries as may be determined by the Treasury; the inspectors may be removed from time to time, and others appointed. Justices at quarter sessions are to appoint conservators of rivers, and may grant warrant to search suspected places.

In 1865, the powers and duties of conservators were explained and defined by 28 & 29 V. c. 121. This act also appointed special commissioners, but they were discontinued by an act of 1873 (36 & 37 V. c. 13). In 1873, the laws relating to salmon fisheries in England and Wales were again amended by 36 & 37 V. c. 71,

which act commenced on the 1st of September, 1873. The act is divided into ten parts. The first part relates to definitions; the second part relates to fishery districts, and gives power to the secretary of state to alter and combine districts, and to alter the number of the conservators appointed at quarter sessions. The third part relates to the restrictions as to certain modes and times of taking and selling fish. No draft net is to be shot within 100 yards of another until the latter is landed. No eel baskets are to be fixed between the 1st of January and the 24th of June. No person is to interfere with salmon during the close season under a penalty of £5. There is to be no fishing for salmon, except with a rod or line, within fifty yards above, or 100 yards below, a weir or mill-race. The fourth part relates to licenses, and imposes a penalty of £5 and £1 for each fish on killing salmon without a license. The fifth part relates to the constitution of boards of conservators, and the sixth part to the powers of water bailiffs, who may apprehend persons fishing illegally at night. Part seven enables boards of conservators to make by-laws for certain purposes. Part eight imposes a penalty of £20, and for every day such offence is continued, on all persons rebuilding weirs and making new weirs without fish passes, and raising or altering weirs so as to increase obstruction to the passage of salmon. It also enables the board of conservators to petition the secretary of state for the purpose of acquiring compulsorily a weir or obstruction, in order to remove it. Part nine empowers any board of conservators, after due notice, to put up a grating at any watercourse or mill race at their own discretion, and to put up a grating at the mouth of any stream with the consent of the secretary of state. And the owner or occupier of adjoining lands must preserve the grating from injury, or from being with his knowledge improperly opened or removed, under a penalty of £5. Part ten relates to legal procedure, and directs the secretary of every board of conservators to make an annual return to the secretary of state.

By 26 V. c. 10, and 33 & 34 V. c. 33, the export of unclean or unseasonable salmon is prohibited at all times, and of any salmon during the time at which the sale of salmon is prohibited in the district where it was caught, under a penalty of £5 for each salmon. The burden of proving that any salmon entered for exportation between the 3rd of September and the 30th of April is not so entered in contravention to 26 V. c. 10, lies upon the person entering the same for exportation. By s. 19 of 36 & 37 V. c. 71 (mentioned before), no person may buy or sell any salmon, or have any salmon in his possession for sale between the 3rd of September and the 1st of February both inclusive, under a penalty of £2 for every salmon. But this does not apply to fish salted in a legal time, or to fish caught legally, or without the limits of the United Kingdom. The burden of proof, however, rests with the person selling the salmon. No person may, under a penalty of £1 a fish, sell trout

APPENDI

Scale of Commission as proposed and re
the Council of the Incorporated Law Societ

AS TO FREEHOLDS AND COPYHOLDS.

Loans.

	Mortgagor's Solicitor.	Mortgagee's Solicitor.
For every £100 up to £2,000	A sum equal to 3-4ths of the Mortgagee's Solicitor's allowance	£2 per cent.
And in addition— After the first £2,000 for every £100 up to £15,000	Ditto ditto	£1 per cent.
And in addition— After the first £15,000	Ditto ditto	½ per cent.
Loans under the Drainage Acts—on County and Borough Rates, Dock Dues—and for other purposes under Statutory powers and Securities of a like nature.	The Council is not prepared to suggest a scale for the remuneration of the Mortgagor's Solicitor on this class of securities.	At the rate of ¼ the allowance of the Mortgagor's Solicitor.

Sales and Purchases.

	Vendor's Solicitor.	Purchaser's Solicitor.
For every £100 up to £1,000	A sum equal to 3-4ths of the Purchaser's Solicitor's allowance	£3 per cent.
And in addition— After the first £1,000, for every £100 up to £5,000	Ditto ditto	£2 per cent.
And in addition— After the first £5,000, for every £100 up to £50,000.	Ditto ditto	£1 per cent.
And in addition— After the first £50,000, for every £100	Ditto ditto	½ per cent.

The commission on sale of leaseholds for terms not exceeding originally 100 years, shall be one-fourth less than the scale on sale of freeholds and copyholds.

Fractional parts of £100 to be reckoned as £100.

Where the same solicitor acts for both mortgagor and mortgagee, he should have the mortgagee's solicitor's allowance, and one-fourth of the allowance of the mortgagor's solicitor.

Where a loan on mortgage forms part of a sale and purchase transaction, and the same solicitor acts, the solicitor should be entitled to half the allowance for a mortgage in addition to the allowance for a sale and purchase.

Where the same solicitor acts for both vendor and purchaser, he should have the purchaser's solicitor's allowance, and one-fourth of the allowance of the vendor's solicitor, of the aggregate of which, in the absence of a special agreement, the vendor should bear two-fifths and the purchaser three-fifths.

Sales in lots to be treated as separate transactions, if lots are sold to separate purchasers.

On sales by auction, if a contract is not entered into for the sale of the property, or (if there be more than one lot) for the sale of all the lots, then the vendor's solicitor shall have only one-third of the allowance calculated on the reserved price of the property, or of the several lots unsold.

[SPECIMEN TABLE.]

	Loans.						*Sales.*					
	Mortgagor's Solicitor.			Mortgagee's Solicitor.			Vendor's Solicitor			Purchaser's Solicitor.		
£.	£	s.	d.	£	s.	d.	£	s.	d.	£	s.	d.
100	1	10	0	2	0	0	2	5	0	3	0	0
200	3	0	0	4	0	0	4	10	0	6	0	0
300	4	10	0	6	0	0	6	15	0	9	0	0
400	6	0	0	8	0	0	9	0	0	12	0	0
500	7	10	0	10	0	0	11	5	0	15	0	0
1,000	15	0	0	20	0	0	22	10	0	30	0	0
2,000	30	0	0	40	0	0	37	10	0	50	0	0
3,000	37	10	0	50	0	0	52	10	0	70	0	0
4,000	45	0	0	60	0	0	67	10	0	90	0	0
5,000	52	10	0	70	0	0	82	10	0	110	0	0
6,000	60	0	0	80	0	0	90	0	0	120	0	0
7,000	67	10	0	90	0	0	97	10	0	130	0	0
8,000	75	0	0	100	0	0	105	0	0	140	0	0
9,000	82	10	0	110	0	0	112	10	0	150	0	0
10,000	90	0	0	120	0	0	120	0	0	160	0	0
15,000	127	10	0	170	0	0	157	10	0	210	0	0
20,000	146	5	0	195	0	0	195	0	0	260	0	0
30,000	183	15	0	245	0	0	270	0	0	360	0	0
40,000	221	5	0	295	0	0	345	0	0	460	0	0
50,000	258	15	0	345	0	0	420	0	0	560	0	0

A

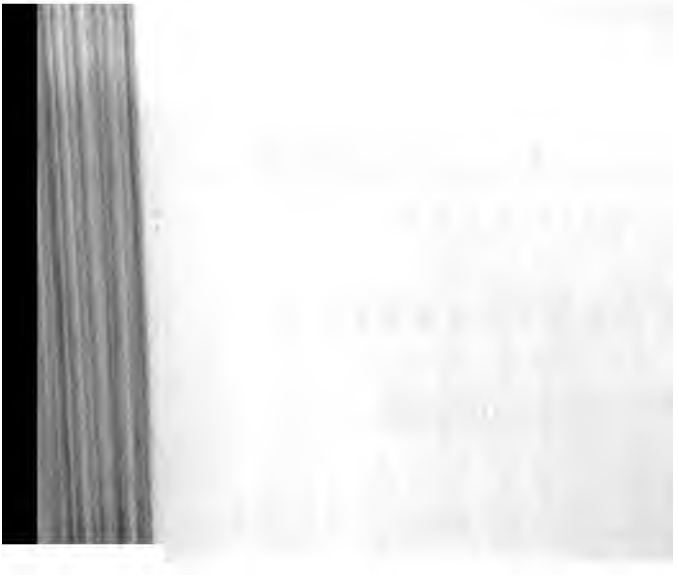
DICTIONARY

OF

AW TERMS, MAXIMS,

AND

JUDICIAL ANTIQUITIES.



A

DICTIONARY

OF

LAW TERMS, ETC.

The terms which have been previously explained in the text of the work have been mostly omitted in the DICTIONARY, *and a reference to them will generally be found in the Index.*

A.

ABATE has various significations in law; implying to break down, destroy, or remove; so, to abate a castle, fort, or house, is to beat it down; and to abate a nuisance is to put an end to it, or remove it out of the way.

ABEYANCE implies that the possession of a freehold inheritance, dignity, or office, is suspended until the owner appears, or the right thereto is determined. Titles of honour are in abeyance when it is uncertain who shall enjoy them; as when a nobleman, holding his dignity descendible to his heirs general, dies, leaving daughters, the queen by her prerogative may grant the title to which of the daughters she pleases, or to the male issue of one of them. A parsonage remaining void is said to be in abeyance.

ABJURATION is applied, first, to a sworn banishment, or the taking an oath to depart from the realm for ever, and was formerly in certain cases imposed on offenders, or religious recusants; but it has fallen into disuse, or been directly abolished as a statute. Second is the *Oath of Abjuration*, imposed by 13 W. 3, c. 6, and subsequent statutes, in which is asserted the exclusive right, under the act of settlement, of the present royal family to the crown of England. In lieu of this oath, and the oaths of allegiance and supremacy, a general form of oath has now been substituted.

ABSENTEES, a parliament so called, held at Dublin, and men-

tioned in letters patent dated 29 H. 8, c. 4. It is also applied in an inculpatory sense to landowners, who draw their rents from one country, and, to its detriment, spend them in another.

ACTUARY may be properly applied to the registrar of a public body or manager of a joint-stock company, but is more specially applicable to the officer of an insurance company who combines with the duties of secretary those of a person skilled in the calculation of insurance risks, life annuities, and reversions; the word has a legal signification from its recognition in the acts for regulating friendly societies.

ADDITION is a title given to a man besides his Christian and surname; that is to say, of what estate, degree, or trade he is, or of what town or country. Additions of *estate* are yeoman, gentleman, esquire. Additions of degree are names of *dignity:* as duke, marquis, earl, knight. Additions of *trade* are carpenter, mason, tiler, &c. Additions of *residence*, York, Norwich, London. Such additions are often necessary in legal proceedings by a charter of Henry I.

ADJUDICATION, a Scottish law term for the attachment of real or personal estate, and is extendible to all such property, applicable to the liquidation of debts, as is not attachable by the simpler process of arrestment.

AD QUOD DAMNUM, a writ which ought to be issued before the queen grants certain franchises, as turning an ancient highway, or establishing a fair or market, which may be prejudicial to others: it is directed to the sheriff to inquire what damage the grant may do. The river Thames is a highway, and cannot be diverted without an *ad quod damnum*, and to do such a thing ought to be by grant of the sovereign.

ADVOCATE is the same in the civil and ecclesiastical law as counsellor in the common law; he assists his client with advice, and pleads for him. *Lord Advocate* is the title given to the principal public prosecutor in Scotland. He is assisted by a solicitor-general and junior counsel, generally four in number, who are termed advocates deputy. The *Faculty of Advocates* constitutes the bar of Scotland, and consists of 400 members.

ADVOWSON is the right of presentation to an ecclesiastical living or benefice; he who possesses this right is styled the *patron*. It is deemed a temporal interest, and may be granted by deed or will; still, it is not properly a *beneficial* interest, though often so perverted; but, as Lyndwood says, "an honorary, burdensome, and useful right."

AFFIDAVIT, an oath, in writing, sworn before an officer of a court, or other person duly authorized to administer such oath, to affirm the truth of the facts therein contained. The true place of abode and addition of every person making an affidavit are to be inserted therein. Affidavits are in many cases made for the purpose of founding a process or preliminary proceeding; as an

affidavit to hold to bail, an affidavit of non-payment of money awarded to be paid, or to ground an attachment for contempt. The practice of magistrates receiving affidavits, or voluntary declarations on oath, relative to matters not the subject of judicial inquiry, is prohibited by 5 & 6 W. 4, c. 62.

AGISTMENT is where cattle are taken in to pasture, at a certain rate per week, and is so called because the cattle are suffered *agiser*, that is to be levant and couchant. There is also agistment of sea-banks, where lands are charged with a tribute to keep out the sea.

ALDERMAN literally means no more than *elder*, and was one of the three degrees among the Saxons; *ætheling* was the first, and *thane* the lowest, but *alderman* was equivalent to our earl; the word was disused in the latter ages of the Saxons, and *earl* introduced in its place. Aldermen, in the city of London, are magistrates, and chosen for life. Under the Municipal Corporation Act they are chosen from the town council; they have precedency only, and no duties distinct from those of our councillors.

ALECONNER, an officer appointed in the court-leet, sworn to look to the assize and goodness of ale and beer within the precincts of the leet.

ALIEN is one born without the dominion or allegiance of the crown of England, and prior to 1870, as such, was subject to certain disqualifications in respect to the holding of property. These were repealed by 33 V. c. 14, and the legal status assimilated to that of natural-born British subjects. But the act confers no right to property out of the United Kingdom, or for the holding of any office, municipal, parliamentary, or other franchise. By a subsequent act, the 33 & 34 V. c. 77, aliens, having been domiciled in England or Wales ten years, are qualified to serve on juries or inquests, same as natural-born subjects, with the exception of members of either house of parliament, judges, or clergymen, catholic or protestant. Every person born of a British mother may hold real or personal estate; if not of British maternity, an alien, if the subject of a friendly state, may hold personal estate, same as an Englishman; or if resident, may take land or tenements and chattels, for the purpose of occupation, trade, or manufacture, for any period not exceeding twenty-one years. Aliens may become naturalized on memorializing the home secretary, and taking a prescribed oath, and paying the fees; upon which a certificate will be granted and enrolled in the Court of Chancery. An alien woman marrying a natural-born subject becomes thereby naturalized. The act which regulates their entry into this country is 6 W. 4, c. 11, by which masters of vessels are to declare to the chief officer of customs at the port of arrival the names and description of aliens on board, or who shall have landed therefrom; penalties for default, £20, or £10 for each alien not reported: not to extend to foreign mariners employed in

the navigation of the vessel. Alien on arrival to declare to an officer of customs his name and description, under penalty of £2. Officer to register declaration, and deliver to the alien, without fee, a certificate. Certificate to be returned on departing the realm, and transmitted to secretary of state. Making false declaration, or forging certificate, penalty not exceeding £100, or three months' imprisonment. Act not to affect foreign ministers or their servants, nor aliens who have been residents three years and obtained certificate thereof; nor aliens under fourteen years of age. The Bankrupt Act, 12 & 13 V. c. 106, extends to aliens and denizens, both to make them subject thereto, and to entitle them to all the benefits given thereby, and is continued in later statutes.

ALIMENT, in law, includes food, clothes, and habitation. In Scottish law, alimony, or aliment, is an allowance for maintenance, to which a married woman, during separation, is entitled from her husband, except in cases of elopement or adultery.

ALLEGIANCE is the duty and obedience due from a subject to a superior.

ALLOCATUR, "it is allowed," applied to the certificate of allowance of costs by the master on taxation.

ALLODIAL is used in contradistinction to *feudal*, and is where an inheritance is held without any acknowledgment to any lord or superior. So, *allodial* lands are free lands, enjoyed without paying any fine, rent, or service.

ALMONER, an officer of a king's, bishop's or other great man's household, whose duty it was to distribute alms to the poor. Previous to the dissolution of the religious houses an almoner was attached to every monastery. At present the Marquis of Exeter is the hereditary grand almoner for disbursing the royal alms.

AMBIDEXTER, one that can use his left hand as well as his right, or that plays on both sides; applied to a juror who takes money of both parties for his verdict.

AMICUS CURIÆ: if a judge is doubtful or mistaken in matter of law, a stander-by may inform the court as *amicus curiæ*, or friend of the court.

AMY, a friend; thus, infants are said to sue by *prochein amy*, that is, by next friend.

ANCESTOR. The law makes a distinction between *ancestor* and *predecessor*; the one applied to an individual and his ancestors, the other to a corporation and its predecessors.

ANCIENTS, a grade in the inns of court. In Gray's Inn, the society consists of benchers, *ancients*, barristers, and students under the bar; and here the ancients are of the oldest barristers. In the Middle Temple, such as have gone through or are passed their readings, are termed ancients; the inns of chancery consist of ancients and students, or clerks; and from the ancients one is yearly chosen, the principal, or treasurer.—*Cowel*.

ANCIENT DEMESNE are such lands as were entered by William I.

in Domesday, under the title *De Terrâ Regis;* and which at this day are held by a species of copyhold tenure.

ANNATS, the same as first fruits.

ANNO DOMINI, the computation of time from the birth of Jesus Christ, which is generally inserted in the dates of all public writings, with an addition of the year of the sovereign's reign.

ANNULUM ET BACULUM. The ancient mode of granting investiture of spiritual jurisdiction to the bishops was *per annulum et baculum;* by the prince delivering to the prelate a ring, pastoral staff, and crosier.

ANNUM LUCTUS, the year of mourning, during which the civil law ordained a widow should remain unmarried: and the same rule prevailed among the Romans in the time of Augustus. It was intended to prevent the difficulty which might arise from a widow marrying, and having a child so soon after the death of the first husband that it might be uncertain which husband was the father.

APPANAGE, a provision of lands or feudal superiorities, formerly assigned by the kings of France for the maintenance of their younger sons.

APPARITOR, a messenger or officer who serves the processes of the ecclesiastical courts.

APPEAL is the removal of a cause from one court to another that is superior, for ultimate decision. An appeal lies from the inferior courts of record into the Queen's Bench; and the writ of error from the Queen's Bench, or Common Pleas, is returnable into the Exchequer Chamber, and from thence to the House of Lords, which is the only final judgment, and conclusive on all parties. In *criminal cases* the judgment of the lower tribunals may be reversed by writ of error. There are also appeals in equity, in bankruptcy, and from the ecclesiastical and admiralty courts, and from the summary convictions of magistrates. All appeals are subject to regulations as to security for costs, bail, and deposits.

APPROPRIATION is where the tithes, glebe, or other ecclesiastical dues, instead of being in the hands of the parson, are appropriated to the use of a bishopric, prebend, college, or other spiritual corporation. Prior to the dissolution of religious houses in the reign of Henry the Eighth, the appropriations belonging to such houses amounted to more than one-third of all the parishes in England. These by the rules of the common law would have been disappropriated, had not a clause been inserted in the statutes of dissolution to give them to the king in as ample a manner as the religious houses held the same at the time of their dissolution. From this source sprang the *lay* appropriations, or secular parsonages, they having from time to time been granted out by the crown; and whence, according to Spelman, they are now called *impropriations*, as being improperly in the hands of laymen. The

distinction, therefore, between *appropriation* and *impropriation*, though the terms are sometimes confounded, is this: when a benefice is in the hands of a bishop, college, or religious house, it is an appropriation; when in the hands of a layman, an *impropriation*.

APPROVEMENT, an old term for *improvement*; as where the lord incloses or discommons part of the waste, he is said to *approve*.

ARGENTUM DEI, God's money; money given in earnest, to bind any bargain. It is still common in the North of England, in bargains for cattle and other commodities.

ARMIGER, or esquire, for the terms are related, is a title of dignity, belonging to such gentlemen as bear arms.

ARMORIAL BEARINGS. Coats of arms were first introduced about the reign of Richard I., who brought them from the crusade in the Holy Land, where they were first invented, and painted on the shields of the knights, to distinguish the variety of persons of every Christian nation who resorted there, and who could not, when clad in complete steel, be otherwise identified. They were the criterion of dignity and descent. In 1798, when the subject was before parliament, it was ascertained that there were 9,458 families entitled to bear arms in England; in Scotland, 4,000. These families, in the language of heraldry, are *noble*, either by creation as peers, or as gentry, who have acquired their armorial bearings from time immemorial. There is nothing, however, to prevent persons assuming arbitrary insignia and armorial bearings to which they are not entitled; and patents of nobility, as they are termed, may be obtained, on proper representation, at the Herald's College. Armorial bearings, whether borne on carriages, plate, seals, or otherwise, are subject to a duty.

ARREST is the corporeal touching or seizing the person, which, in criminal cases, is termed an *apprehension*. It has already been adverted to, and we shall here only remark that in making an arrest in *civil suits*, the corporeal seizing or touching the body is not absolutely necessary; it is sufficient if the bailiff have such possession of the person of the defendant that escape is hardly possible. Thus, if a bailiff come into a room, and tell the defendant he arrests him, and lock the door, it is enough. *Bare words*, however, without some intimation of power over the person, will not constitute an arrest. After the arrest, the officer may justify breaking open any house in which the defendant may take refuge. No arrest can be made on Sunday, unless after an escape.

ARTICLES. 1. *Articles of war* are a code of laws made by the crown from time to time, conformably to the annual Mutiny Act, for the regulation of the land forces. 2. *Articles of the navy* are rules and orders made pursuant to 31 G. 2, c. 10, for the government of the royal navy. 3. *Articles of religion* are the Thirty-nine

Articles drawn up by the Convocation in 1562, unto which persons admitted into ecclesiastical offices are to subscribe. 4. *Articles of the peace* are a complaint exhibited before a judicial authority to compel a person to find sureties to keep the peace.

ARTIFICER, a skilled workman, or, agreeably with a more recent synonym, an *operative*, whose occupation is to manufacture commodities out of wood, iron, cotton, or other raw material.

ASSAY, *of weights and measures*, is the examination of weights and measures by clerks of the market, or other persons appointed for that purpose. The assaying of *plate* made by goldsmiths is the ascertaining the proportion of alloy and pure gold and silver therein, and is a duty discharged by the Goldsmiths' Company, London, who, by various charters and statutes, are constituted assay-masters of all England. All gold and silver plate must be conformable to the standard fineness certified by the stamp of the company's arms, and a variable mark to denote the year in which it is made, with the initials of the maker's name; to imitate this is felony, and to sell without it a misdemeanour, incurring the forfeiture of the article sold. But this does not extend to jewellers' work, such as watchchains, bracelets, or highly chased articles of gold that the company's marks could not be affixed to without injuring the workmanship. See *Gold*.

ASSESSOR, strictly one learned in the law, who sits by a magistrate or other person to advise and aid him in the discharge of judicial duties. Under the Municipal Corporation Act, two assessors are annually elected by the burgesses, whose duties are to revise the burgess lists, and, in conjunction with the mayor, to be present at the election of councillors and ascertain the results of elections.

ASSETS, from the French *assez*, "enough," are, strictly, effects in the hands of an executor or assignee, sufficient to meet demands on the estate of the testator or bankrupt. But the term is more generally applied to all property realized and available to meet the demands of creditors.

ASSIGNEE, the party to whom property, trust, or legal security is assigned, and a term of frequent occurrence in the insolvent laws and in conveyance transactions.

ASSIZE is derived, by Sir Edward Coke, from the Latin *assideo*, to sit by or together. Assizes are held twice a year, or three times in the home counties, except Middlesex, before two judges appointed by the queen's special commission. These judges sit in virtue of five several commissions; namely, commissions of the peace, of oyer and terminer, of gaol delivery, of assize, and nisi prius. *Assize* also signifies any statute or ordinance for regulating the weight, measure, or quality of the thing it concerns; as the assize formerly of bread or ale.

ASSURANCE is the title or legal evidence by which an estate is assured to the owner. It has also latterly begun to be applied to

contingencies of lives instead of *insurance*, which is reserved for fires, losses at sea, &c.

ATTACHMENT differs from arrest in this, that arrest is only upon the *person*, whereas an attachment is often upon the goods. *Attachments* are sometimes issued at the discretion of the judges of a court of record against a person for *contempt*, for which he is committed without appeal, indictment, or information; for though Magna Charta says none shall be imprisoned without the judgment of his peers, or the law of the land, yet this summary proceeding is considered necessary for the due administration of justice, and is certainly now confirmed as part of the law of the land. In civil suits, by the custom of the city of London, the money or goods of a defendant may be attached, either in the plaintiff's own hands or of a *third person*, and this either in the mayor's or the sheriff's court. But the appearance of the party in court whose goods have been attached dissolves the attachment.

ATTAINDER is the stain and degradation which attached to a person and his descendants by being capitally adjudged guilty of treason or felony. It is of feudal origin, and used to entail forfeiture of property and corruption of blood: by which last the convict was divested of his civil rights and reputation, could not be a witness in any court, nor have heirs, so that his estate escheated to the king.

ATTORNEY-GENERAL, a ministerial officer of the crown, created by letters patent, whose public functions are to file bills in the Exchequer, to exhibit informations, and prosecute for the crown in civil matters. He is the only representative of the queen in the courts. When he prosecutes in his official capacity he has always the right to reply.

AUGMENTATION, the name of a court erected in the 27 H. 8, for the protection of the king's interest in the possession of the dissolved religious houses, with revenues under £200 per annum. It still subsists in Palace Yard, and is the depository of valuable records.

B.

BACHELOR, a man who has never been married.

BACHELOR OF ARTS is the first degree taken by students in the universities.

BACKING OF WARRANTS. When the warrant of a justice in one county is to be executed in another, it must be signed by a justice in such other county, which is termed *backing it*.

BAILIFFS. These are of divers sorts; as bailiffs of liberties, of lords of manors, of cities, as of Westminster, and of royal castles, as of Dover. Sheriffs are also called the queen's bailiffs, and their counties their *bailiwicks*. There are also bailiffs of forests and

bailiffs in husbandry; which last imply the steward, or chief servant of a landowner. *Bound bailiffs* are sheriffs' officers, as being bound to the faithful execution of their office. The 7 & 8 V. c. 19, was passed to check the extortions of bailiffs in actions for debts and damages in certain petty courts held in sundry hundreds, lordships, and liberties, and provides that such bailiffs shall be appointed by the judges of the courts.

BAILMENT is a delivery of goods in trust, on a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee, and the goods re-delivered as soon as the time or use for which they were bail shall have elapsed or have been performed. The law of bailment has been comprised in the chapters on *Contracts* and *Assumpsit*, pp. 456 to 470.

BAN, public notice given of anything. The bans published previous to marriage are in order that if any person has any objection to urge against the marriage, he may do so before the nuptials are solemnized.

BANKRUPT is formed from the Latin *bancus*, a *bench* or *table*, and *ruptus*, broken. Bank originally signified a bench, which the first bankers used in the public places, in markets and fairs, on which they told their money, and wrote their bills of exchange, &c. Hence when a banker failed, his *bank* was broken, to advertise the public that the person to whom the bench belonged was no longer in a position to continue his business.

BANNERET, an intermediate name of dignity, nearly, if not entirely, obsolete, between that of baron and knight.

BAR, a term applied to the entire body of barristers, who advise in matters of law, plead in the courts behind the partition, from which the term is derived, that separates them from the bench on which the judges sit. A *trial at bar* is one which takes place before all the judges at the bar of the court in which the action is brought. Bar is also applied to the place at which prisoners stand for trial, and to the partition in both houses of parliament, beyond which none but members and officials are allowed to pass.

BARON AND FEME. The legal style of husband and wife.

BARONET. A dignity inheritable, created by letters patent, and descendible to the male heirs of the grantee. It has precedency of knighthood, and is the next title or degree to a baron.

BARONS. A title of distinction, formerly very common. The burgesses of London, in Henry III., were styled barons, and so were persons holding lands of the king. There are still barons by office, as those of the exchequer and of the Cinque Ports. The barons of the House of Lords are—1. By prescription; for that they and their ancestors have immemorially sat in the upper house. 2. Barons by patent, having obtained a patent of this dignity to them and their heirs. 3. Barons by tenure, holding the title as annexed to grants of lands, which is the title by which the bishops sit in the upper house, though Mr. Hallam considers that they hold their

legislative places as rights annexed to the ecclesiastical office by the custom of Europe.

BARONY, in Ireland, is used for a subdivision of counties, and is equivalent to hundred or wapentake in England.

BENEFICE, generally applicable to any church dignity or preferment, but usually restricted to a parochial living, either rectory or vicarage. It must be given for life, not for years or at will.

BENEFIT OF CLERGY. A term of such frequent occurrence in old expositions of the criminal law that it may be proper to give a brief notice of the origin and abolition of the *privilegium clericale*. There can be little doubt the benefit of clergy originated in the great power and influence of the priesthood during the dark ages, when both the people and their rulers were disposed to treat with peculiar favour and honour the ministers of religion; and, in consequence of which, they obtained two extraordinary and exclusive privileges:—1. Places consecrated to religious solemnities were exempt from criminal arrests, which was the foundation of sanctuaries. 2. The persons of clergymen were exempt, in certain cases, from criminal process before the secular judge, and made amenable only to ecclesiastical censure and jurisdiction. The *first* of these immunities was much abridged by 29 H. 8, and finally abolished by 21 J. 1, c. 22. The *second*, after undergoing various mutations, descended to our own time, and was only abolished by 7 & 8 G. 4, c. 28, s. 6. Originally the benefit of clergy was confined to spiritual persons, actually admitted into holy orders, and wearing the clerical tonsure; but in process of time the privilege was extended to every one who could read. When education became more diffused, by the discovery of printing, and other concurrent causes, reading was deemed an incompetent proof of clerkship, or being in holy orders; readers, therefore, were excluded from the *full* benefit of clergy, though not liable to the same severity of punishment, in case of delinquency, as non-readers,—the totally illiterate. Afterwards, it was properly considered that education and learning are no extenuation of guilt, but the reverse; and that if the punishment of death for simple felony was too severe for those who had been liberally instructed, it was much more so for the totally unlearned. Accordingly, by the 5 Anne, c. 6, it was enacted that privilege of clergy should be granted to all who were entitled to it, without requiring them to read by way of conditional qualification. At present, no one can claim this ecclesiastical immunity; and every one guilty of felony, whether peer or commoner, layman or spiritual person, is made amenable to the same criminal procedure and responsibility.

BEYOND SEAS. By the 19 & 20 V. c. 97, s. 12, no part of the United Kingdon of Great Britain and Ireland, or of the Channel Islands, or the islands adjacent, being within the dominions of her Majesty, is deemed to be "beyond seas" within the meaning of that act, or the 4 & 5 Anne, c. 16.

BILL, in parliamentary language, is the draft or outline of an intended statute. In the Lords any individual peer, without the previous permission of the house, may lay a bill on the table; but in the Commons no public bill can be brought in unless a motion for leave be previously obtained. *Bill of pains and penalties* is an unusual mode of punishing by degradation or otherwise an alleged offender, by passing for the purpose an act of parliament. The mode of proceeding in passing such a bill does not vary from that adopted in regard to other bills. Bishop Atterbury was deprived of all his offices and banished for ever by a bill of pains and penalties in the reign of George I. The same mode of proceeding was attempted, and relinquished, against Queen Caroline, the wife of George IV.

BILL OF LADING is a memorandum signed by masters of ships acknowledging the shipment of goods, and comprises a description thereof, and the names of the shipper, master of vessel, and person to whom they are consigned.

BILLS OF MORTALITY are abstracts from parish registers, showing, as their name imports, the number that have died in any parish or place during certain periods of time, as in each week, month, or year, and are accordingly denominated weekly, monthly, or yearly bills. They also include the number of baptisms during the same period, and generally those of marriages. *The London Bills of Mortality* were first used in the year 1562, and from 1603 have been kept in regular series. They were intended to afford timely notice of the plague, and, in addition to the number of christenings and burials, exhibit the disease occasioning death in each parish: but are very defective; the births and deaths of Dissenters are excluded, and the description of diseases, from the reports of the searchers, is inaccurate and unscientific. Moreover, of the 152 parishes of the metropolis, five of the larger, namely, Marylebone, Pancras, Paddington, Chelsea, and Kensington, are omitted in the bills, though usually included in acts of parliament regulating its general police and government.

BLACK MAIL, an ancient composition in money or provisions, paid by the inhabitants of the northern counties to protect them from the ravages of the border robbers, called mosstroopers.

BLACK ROD, *the gentleman usher of the*, has his name from the black rod, on the top whereof sits a lion in gold, which he carries in his hand. He has the keeping of the chapter-house door when a chapter of the Order of the Garter is sitting; and, in the time of a parliamentary session, he attends on the House of Lords. He is appointed by letters patent from the crown, and his deputy is styled the yeoman usher. They are the official messengers of the Lords, and either the gentleman or yeoman usher summons the House of Commons to the Lords, when the royal assent is given to bills. They execute orders for the commitment of offenders, and assist at the introduction of peers and other ceremonies.

BOARD, used to denote in their collective capacity the officers of some administrative department: as the Board of Trade, or the late Board of Control. *Bureau*, in France, is an equivalent term.

BOILING TO DEATH, a punishment awarded by the 22 H. 8, c. 9, for persons convicted of killing by poisoning. The preamble to the statute states, that one John Roose, a cook, had been lately convicted of throwing poison into a large pot of broth, prepared for the Bishop of Rochester's family and the poor of the parish; and the said John Roose was, by a retrospective clause of the statute, ordered to be boiled to death. This sentence was carried into effect in Smithfield, where, eleven years after, a young woman, named Mary Davies, suffered in the same manner for a similar crime.

BOLTING, a fictitious arguing of cases in the inns of court for the purpose of training the students to legal dialectics. It is inferior to *mooting*, and may be derived from the Saxon *bolt*, a house, because done privately in the house for instruction. It is now disused, and has given way to the more substantial practice of *eating a way* to the bar by keeping commons, which, however, are not always kept.

BONA FIDE, anything done with good faith, without fraud, circuity, or deceit.

BORDARS AND COTTARS formed two of the ancient divisions of Anglo-Saxon society, of which the former, in consideration of a cottage, were required to furnish poultry, eggs, and other articles of diet for the lord's table; the latter were employed in the trades of smith, carpenter, and other handicraft arts they had been instructed in at the charge of their masters. Inferior to these were the *thralls* or *servi*, principally employed in menial services about the mansion. Their lives were professedly protected by law; in other respects they were in the lowest degradation; so much so as to be considered regular articles of traffic. — *Wade's History of the Productive Classes*, 4 edit., p. 8 (*Chambers*).

BOROUGH, from the Saxon *borhoe*, signifies a corporate town which is not a city, and also such a town as sends members to parliament. According to Brady, parliamentary boroughs were either by charter, or towns holding of the king in ancient demesne. They are also by act of parliament, as the new boroughs created in 1832, by the acts for the amendment of the representation. The 2 & 3 V. c. 27, empowers the judges in courts of record in the municipal boroughs reformed by 5 & 6 W. 4, c. 76, to make rules for regulating the process in civil actions: such rules to be confirmed by three of the judges of the superior courts at Westminster. Courts are to be held four times yearly, and with no greater interval between the holding of any two successive courts than four calendar months. All personal actions are to be commenced by writ or summons.

BRANDING, or burning on the hand or face, was a punishment

inflicted for various offences. It is abolished, and whipping or imprisonment substituted.

BREHON. In Ireland the judges and lawyers were anciently styled *brehons*, and the Irish law called the brehon law. It is mentioned by Spenser in his "State of Ireland."

BREVET is a term applied to a commission conferring on an officer a degree of rank next above that which he holds in his regiment, unaccompanied, however, with a corresponding increase of pay. Brevet rank does not exist in the navy, and in the army it neither ascends higher than the rank of lieutenant-colonel nor descends lower than that of captain.

BRIDEWELL, a name often given to houses of correction. In different parts of the country houses of correction are called Bridewells, from the noted hospital of St. Bride's, London, having been the first place of confinement in which penitentiary reform was a primary object.

BRIDGE MASTERS, of London Bridge, are officers chosen by the citizens, who have certain fees and profits belonging to their office, and the care of the bridge and bridge-house estates.

BRIEF, a summary of the client's case, made out for the instruction of counsel, wherein the case of the party ought to be briefly, but is often lengthily, stated. Formerly it was the practice of the counsel personally to take these memoranda on their knees, as appears from Dugdale, who, speaking of St. Paul's, says, "Each lawyer and serjeant, at his pillar, heard his client's cause, and took notes thereof, on his knees, as they do at this day at Guildhall." A brief is also any writing issued out of the superior courts, commanding anything to be done in judicial course. There is likewise a church-brief, or queen's letter, sometimes issued under the privy seal, addressed to the clergy, magistracy, and parish officers, authorizing collections to be made for a specified charitable purpose.

BUBBLE, a name applied to any fraudulent or deceptive joint-stock project, started with an exaggerated prospectus of commercial gain, for the purpose of enriching the promoters at the expense of the credulous subscribers. It was to restrain such nefarious schemes that the *Bubble Act*, 6 G. 1, c. 18, was passed; but the difficulties in its construction caused it to be repealed by 6 G. 4, c. 91, and the proprietors of bubble companies are now chiefly punishable by liability for the expenses of their devices, unless guilty of fraud or conspiracy at common law.

BUDGET, the general financial statement annually made to the House of Commons by the chancellor of the exchequer, comprehending a review of the income and expenditure of the past year, as compared with those of preceding years, an exposition of the intended repeal, imposition, or modification of taxes during the session, with a statement of the excess or deficiency of the public income.

BULL, a brief or mandate of the pope; so called from the lead or gold seal sometimes affixed thereto.

BULL AND BOAR. By custom of some places, the parson of the parish may be obliged to keep a bull and a boar for the use of the parishioners in consideration of his having the tithe of calves and pigs.

BULLION, gold or silver in ingots or bulk before it is coined, though sometimes incorrectly applied to the precious metals generally. It is imported duty free, and may be landed without report, entry, or warrant.

BURG, a small walled town or place of privilege —*Jacob.*

BURGESSES are properly the men of trade, or the inhabitants, of a borough or walled town; but the name is equally applied to the constituency of municipal authorities, and of their representatives in parliament.

BURIAL, in the churchyard, is the common right of every parishioner, without fee for breaking the ground; but the parson cannot be compelled to bury in a stone coffin; nor in a family grave or vault, although he may have given permission to erect it; for nothing save a license from the bishop can secure to any one the unreserved right of burial in a particular spot in a church or churchyard. Persons who are dissenters, and all persons baptized, though not by *clergymen*, are entitled to Christian burial, equally with those who are baptized in the established church. Funerals are exempt from toll.

BURSAR, the cashier in collegiate and conventual bodies.

BY-LAW is a private law made by those duly authorized by charter, custom, or prescription, for the conservation of order and good government in some place, corporation, or jurisdiction. A by-law by a corporation may inflict a penalty, recoverable by distress or action of debt. But it cannot be made with a penalty of imprisonment, or forfeiture of goods and chattels. All by-laws are to be reasonable; and ought to be for the common benefit, and not the private advantage of any particular persons, and must be consonant to the public statutes, as subordinate to them. Under the Municipal Corporation Act, by-laws for the prevention of nuisances, and imposing a penalty not exceeding £5, may be made with the consent of two-thirds of the town council.

C.

CADET, the younger son of a gentleman; it is also applied to a student in a military academy, or to a volunteer in the army waiting for a commission.

CALENDAR is a table of the days of the year, arranged to assist the division of time, and to indicate the days apportioned to religion, business, or the anniversaries of memorable events. It is

derived from the Romans, who called the first days of each month *calends*, from a word which signified called; because the pontiffs, on these days, called the people together, to apprise them of the days of festival in that month. *Calendar months* are the twelve months in the year, consisting of thirty or thirty-one days each, except February, which has twenty-eight, and in leap-year twenty-nine days.

CALLING THE PLAINTIFF is the ceremony which takes place when the plaintiff is *nonsuited*. It is usual for a plaintiff, when he or his counsel perceive that he has not given evidence sufficient to maintain his issue, to be voluntarily nonsuited, or withdraw himself, upon which the crier is ordered to *call the plaintiff;* and if neither he nor any one for him appears, he is nonsuited, the jurors are discharged, and the action is at an end, and the defendant recovers costs. A nonsuit, however, is not, like a verdict, a bar to another action, when the plaintiff can get better proof.

CAMPUS MAIL, formerly an assembly of the people every year upon May day, when they confederated to defend the country against foreigners and all enemies.

CANDLE, *sale by inch of*, in which a piece of wax candle, about an inch long, is burning, and the last bidder when the candle goes out is the buyer of the goods exposed for sale.

CANDLEMAS DAY, the anniversary festival of the purification of Mary the mother of Christ, on the 2nd of February. It was celebrated in the Christian churches with an abundance of lights, and hence was called *Candlemas day*, as well as the day of Purification. The practice of illuminating the churches ceased in this country the second year of Edward VI. It is a *dies non* in the courts, no judge sitting on that day.

CAPIAS, the prenomen to several kinds of writ, issued either before or after judgment, and derived from the operative Latin word *that you take*. It is no longer, however, used in commencing personal actions, a writ of summons having been substituted for the *capias* in the superior courts at Westminster.

CAPITE, *tenants in*, a common mode of tenure under the feudal domination, whereby a man held lands of the king either by knight's service or in socage. It is abolished by 12 Car. 2, c. 24, and all tenants in *capite* turned into free and common socage.

CARACT is the twenty-fourth part of an ounce, or any other quantity of metal. The fineness of gold is usually estimated in caracts; thus, if twenty-two caracts of pure gold and two of alloy be mixed together, it is said to be twenty-two caracts fine.

CARDS. The stamp duty on playing cards is regulated by 25 & 26 V. c. 22, which repeals the former act relating to cards, namely, 9 G. 4, c. 18. An annual duty of £1 is to be paid by every maker of playing cards. The duty on every pack of cards is to be denoted on the wrapper, and is threepence. Cards must be

sold in separate packs enclosed in wrappers; imported cards enclosed in wrappers, according to 16 & 17 V. c. 107, and second-hand cards may be sold. Unstamped cards may be exported. The name of the maker must be printed on the wrapper, and the seller must cancel the stamp on the wrapper. Frauds relating to wrappers are punishable by a fine of £20. By 33 & 34 V. c. 22, the duty upon a license, to be taken out by any person, not a maker, who sells cards, has been abolished.

CASTLE. In the time of Henry II. there were in England 1115 castles, and every castle had a manor annexed; during the civil wars most of these castles were demolished, so that generally there remain only the ruins of them at this day.

CASUS OMISSUS, implying that something is omitted, or not provided against by statute.

CATHEDRAL, the church of the bishop, where the service is performed with greater ceremony.

CAVEAT, a process entered in the spiritual courts to restrain the institution of a clerk to a benefice, or the probate of a will, &c.

CEPI CORPUS is a return made by the sheriff upon a *capias* or other process, that he has taken the party.

CERTIORARI is an original writ issuing out of Chancery, the Queen's Bench, or other courts of Westminster, directed in the queen's name to the judges or the officers of inferior courts, commanding them to return the record of a cause or matter depending before them, to the end the party may have the more sure and speedy justice before her Majesty, or such justices as she shall assign to determine the cause. This writ is only grantable on matters of law, and cannot be had to remove causes after issue is joined.

CESTUI QUE VIE is he for whose life any lands or tenements are granted.

CHAFFERS, wares or merchandise; *chaffering* is yet used for tedious bargaining, and is mentioned 3 Edw. 4, c. 4.

CHAMBERLAIN, *Lord*, an officer of the royal household, who has control over the queen's chamber, the wardrobe, the chaplains, physicians, comedians, &c. The *Chamberlain of London* is commonly the receiver of the city rents, payable into the chamber, and has great authority in determining the rights of freemen, apprentices, and orphans.

CHAMBERS OF THE KING. The inlets, havens, or ports of the kingdom are so called in ancient records.

CHAMPION OF THE KING, an ancient officer, whose office it is at the coronation, when the king is at dinner, to ride armed *cap-à-pie*, into Westminster Hall, and by the proclamation of a herald make a challenge, that if any man shall deny the king's title to the crown, he is there ready to defend it in single combat; this done, the king drinks to him, and sends him a gilt cup, with a

cover, full of wine, which the champion drinks, and has the cup for his fee. The championship, since the coronation of Richard II., when Baldwin Greville exhibited his petition for it, was adjudged from him to Sir John Dymocke, his competitor (both claiming from Marmion), and has continued since in the family of the Dymockes, who hold the manor of Scrivelsby, in Lincolnshire, hereditary from the Marmions, by grand sergeantry, that the lord thereof shall be the king's champion. Accordingly, a Dymocke performed the office at the coronation of George III. and George IV.; but the show was omitted at the coronation of William IV. and Queen Victoria.

CHANCELLOR OF A DIOCESE is an ecclesiastical and judicial officer under the bishop, including the power both of an official principal and vicar-general. *Chancellor of the Duchy of Lancaster* is the chief judge of the duchy court.

CHANCE-MEDLEY. Where death is caused unintentionally, and not through negligence or wantonness, it is called chance-medley.

CHAPLAIN, a spiritual person, retained by the king, a nobleman, or some official personage, to perform divine service in the household. The king, queen, and royal family may retain as many chaplains as they please; but, with respect to other persons, they are limited by statute. Chaplains so retained enjoy peculiar privileges, as to non-residence, and holding a plurality of livings; but no chaplain is entitled to these privileges unless he be retained by letters testimonial under hand and seal.

CHAPTER is an assembly of clergymen, consisting of prebends and canons under the dean in a cathedral church.

CHARITIES. The sovereign, as *parens patriæ*, is the guardian of all charities, and the attorney-general, at the relation of an informant, may file an information in the Court of Chancery to restore any abused or dilapidated foundation. The 16 & 17 V. c. 137, provides means for securing a due administration in certain cases of *Charitable Trusts*, and for the more beneficial application of charitable funds, by empowering the crown to appoint four commissioners, one secretary, and two inspectors for these purposes. Powers of commission, "as they in their discretion may think fit," to inquire by their inspectors into all charities, their nature and objects, management, and results thereof; the value and condition of estates, funds, and incomes. Inspectors may examine witnesses on oath. Board may sanction building leases, working mines, reforms, improvements, or, in special cases, order sale or exchange of estates, or redemption of rent-charges, s. 25. By s. 28, where the appointment or removal of a trustee, or any other relief, order, or direction is desirable, relating to any charity, of which the gross annual income exceeds £30, the master of the rolls and vice-chancellor, upon application to them at chambers, to have the same jurisdiction as the lord chancellor has upon informations, &c., under the 15 & 16 V. c. 80. In the city of London, the provision

CITY, a term introduced about the period of the Conquest, and not limited, as Blackstone conjectured, to episcopal towns. It appears to be derived from *civitas*, and applied to *all* towns of eminence, signifying that they were places subject to municipal government. Long after the Conquest, city is used synonymously with burgh, as appears in the charter of Leicester, it being called both *civitas burgus*, which shows the commentator is mistaken in confining the term to a town which "either is or hath been the see of a bishop." But, on this point, Mr. Woodeson, the Vinerian professor, has adduced a decisive authority. It is that of Ingulphus, who relates, that at the great council assembled in 1072, to settle the claims of two archbishops, it was decreed that bishops' sees should be transferred from *towns* to *cities*.

CIVIL LIST. Since the revolution of 1688 it has been the practice, at the commencement of a new reign, to enter into a specific arrangement with the sovereign, by which the ancient hereditary revenues of the crown are placed at the disposal of parliament, in exchange for an equivalent annuity for life. The annual sum so granted in lieu of the crown revenues is denominated the *civil list*, which is yearly set apart from the general revenue of the kingdom for the personal maintenance of her Majesty, and to support the honour and dignity of the crown. The sum so granted by 1 V. c. 2, amounts to £385,000, to be applied as follows:— For her Majesty's privy purse, £60,000; salaries for the household and retired allowances, £131,260; expenses of the household, £172,500; royal bounty, alms, and special services, £13,200; pensions to the extent of £1,200 per annum; unappropriated moneys, £6,840. The reduction in the income of the queen below hat of her predecessors has been effected by the transfer of various harges, heretofore paid out of the civil list, to the consolidated ınd.

CLEAR DAYS. In a lawsuit there are several steps in the proceedgs which must be taken within a specified number of clear days. reckoning these days, the day on which the process is served and day of hearing are not counted.

CLERK is, strictly, a person in holy orders, but it is now generally lied to any person whose chief occupation is writing, in a court aw or elsewhere. Officers in courts of law were, formerly, n clergymen; and hence, to this day, their successors are deinated clerks. Kings were anciently called clerks, *Dav.* 4. *Voss* v. *Heavyside*, a clerk in a mercantile house, described ie notice of justification by the addition of "gentleman," rejected, from inaccurate description, as bail. Clerks are a ior sort of servants, and the customary rule in domestic service month's wages or a month's notice does not apply to them. s not appear settled what warning they are entitled to. Mr. suggests a quarter's notice on either side would be probably l sufficient.

CLERK OF THE ASSIZE is he that records all things judicially done by the judges of the circuits.

CLERK OF THE PARLIAMENT ROLLS is the name of an officer in each house of parliament who records proceedings in parliament, and engrosses them on parliament rolls, for their better preservation.

CLERK OF THE PEACE. An officer belonging to the quarter sessions, whose duty it is to read the indictments, enrol the proceedings, draw the processes, and transact other business incident to the quarter sessions.

CLUB-HOUSES, in London, are associations to which individuals subscribe for purposes of mutual entertainment and convenience, the affairs of which are usually conducted by a steward or secretary, who acts under the immediate superintendence of a committee. It is now settled, *Flemming* v. *Hector*, that they have no legal character similar to commercial partnerships or joint-stock companies, and that the members of such societies are not liable for the acts of their secretaries, stewards, or committees.

COCKET, a seal belonging to the Custom-house, or rather a scroll of parchment, sealed, and delivered by the officers of the customs to merchants, as a warrant that their merchandise is customed.

COGNOVIT ACTIONEM is where a defendant confesses the cause of action to be just; upon which judgment may be entered up, and execution levied according to the terms therein agreed upon by the parties.

COIF, a slip of lawn which serjeants-at-law wear on their heads when created.

COIN, a piece of metal, used as money, mostly of copper, silver, or gold, impressed with a public stamp, as a guarantee for its weight and fineness.

COLLEGE, a corporation, company, or society, having certain privileges by license of the king; such as the colleges at Oxford and Cambridge.

COLLEGIATE CHURCH consists of a dean or other head and priests as canons or prebendaries; such as Westminster, Windsor, and Southwell.

COLLISION OF VESSELS. In order to prevent collisions of vessels certain steering and sailing rules have been laid down by the Merchant Shipping Amendment Act, 1862, the chief of which are as follows:—Art. 11. If two sailing ships are meeting end on or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other. Art. 12. When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close hauled

and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward. Art. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other. Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other. Art. 15. If two ships, one of which is a sailing ship and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

COMMENDAM. When a beneficed clergyman is promoted to a bishopric, he vacates his benefice by the promotion; but if the king, by special dispensation, give him power to retain his benefice, he is said to hold it *in commendam*. Future grants *in commendam* are abolished by 6 & 7 W. 4, c. 77.

COMMONS, or common lands, are lands in a state of nature or waste, of which individuals have not the severalty. Commonable lands are those lands which, during a part of the year, are in severalty, that is, occupied severally by individuals as their own, to the exclusion, for the time, of other people. See *Commons*, p. 421.

COMPURGATOR, in some systems of law, one who, by oath, justifies another's innocence.

CONDONATION. In *Keats* v. *Keats* (Dec. 14, 1858), a difficulty arose in the court of Divorce on the legal import of "condonation" in matrimonial suits, and the judge ordinary, Sir Cresswell Cresswell, after remarking that the term had not been defined, explained that it "meant a blotting out of the offence imputed, so as to restore the offending party to the position occupied before the offence was committed." A juryman demurred to this definition, but his lordship would not allow a juryman to constitute himself a court of appeal against his ruling. A plaintiff may be said to have condoned an offence, either by the pardoning of or complicity with the wrong-doing of the defendant. Condonation, as accessory or accomplice, bars the suit of the plaintiff.

CONGÉ D'ÉLIRE is the queen's license to the dean and chapter to *elect* a new bishop when the see is vacant. It is accompanied by letters missive from the crown, naming the person to be elected.

CONJUGAL RIGHTS, *a suit for restitution of*, is where either the husband or wife, without legal cause, lives separately from the other, in which case the ecclesiastical courts will compel them to come together, if either party, as Blackstone remarks, be weak enough to desire it, contrary to the other's inclination.

CONSISTORY, an ecclesiastical court, held in the nave of the

cathedral, or in some chapel, aisle or portico, belonging to it, in which the bishop presided, with some of his clergy for assistants. It is now held by the bishop's chancellor, or other official, for determining matters of spiritual cognizance. Before the establishment of the Court of Probate, the consistory courts granted probates of wills for chattels within their jurisdiction ; but if the deceased left property in two dioceses, the probate was granted by the prerogative court of the province.

Consul, an officer appointed by the government to reside abroad, to watch over the interests of merchants, and assist, by advice and protection, travellers belonging to the country from which he derives his appointment.

Contingent Legacy. If a legacy be left to any one when he attain or if he attain the age of twenty-one years, it is contingent ; and if he die before that time, it is lapsed. *Contingent remainder* is when an estate in remainder is limited to take effect either to an uncertain person, or upon an uncertain event ; so that the intermediate estate may chance to be determined ; and the remainder never take effect. *Contingent use* is a use limited in a conveyance of land, which may or may not happen to vest according to the contingency expressed in the limitation of such use.

Conventicle, a private assembly, or meeting, for the exercise of religion.

Convention Parliament, the lords and commons who met without the assent of the sovereign, on the abdication of James II., and settled the Prince of Orange on the throne.

Conveyance, a deed by which the property in land and tenements is conveyed from one person to another. A conveyance of some advantage or right issuing out of land is styled a *grant*, as a grant of annuity or advowson, &c.

Convocation, or representative assembly of the ecclesiastical body, is a sort of miniature parliament, in which the archbishop presides ; the upper house of bishops represents the lords, and the lower, composed of the delegates of the inferior clergy, represents the commons. Its meetings, except for formal purposes, were suspended after 1717, but of late years it has been allowed to sit for a few days in each year. It has no power to transact actual business without the license of the crown.

Coparcenery. When an estate of inheritance descends from the ancestor to two or more females, it is said to be an estate in coparcenery, and those to whom it descends are *coparceners*.

Corn Laws. By an act of 1846, the 9 & 10 V. c. 22, all duties on the importation of corn, meal, &c., ceased in 1849, and the following registration duties only were levied ; namely, on every quarter of wheat, barley, oats, bigg, rye, pease, and beans imported, *one shilling*, and upon every hundredweight of wheatmeal, barley, or oatmeal, *fourpence halfpenny*. But under the 27 V. c. 18, corn duties became chargeable by *weight*, and in lieu of 1*s.*

per quarter 3*d.* per cwt. became the chargeable custom duty. The duties were wholly abolished in 1869.

Corn Rents. Rents stipulated to be paid in a fixed quantity of corn, or in money according to the market price of corn. By 18 Eliz. c. 6, in college leases, one-third of the old rent then paid is directed in future to be paid in wheat or malt, reckoning a quarter of wheat for each 6*s.* 8*d.*, or a quarter of malt for each 5*s.*, or that the lessees should pay for the same according to the price wheat and malt have been sold at in the market next adjoining to the respective colleges on the market-day before the rent became due.

Corody, a right of sustenance, or to receive a certain allowance of provisions for maintenance.

Corpus Christi Day, a festival instituted in the year 1264, in honour of the sacrament; to which, also, a college in Oxford is dedicated.

Corsned, or morsel of execration, was a test of delinquency employed in the dark ages. It consisted of a piece of bread or cheese, which was consecrated with a form of exorcism, desiring of the Almighty that it might cause convulsions and paleness, and find no passage, if the accused to whom it was given was really guilty; but might turn to health and nourishment if he was innocent; like the water of jealousy among the Jews. Historians relate that Godwin, Earl of Kent, in the reign of Edward the Confessor, adjuring the death of the king's brother, at last appealed to his *corsned*, which stuck in his throat and killed him.

Costs. The expenses incurred in the prosecuting or defending an action are so called. Costs between attorney and client are those which the client always pays his attorney, whether he is successful or not, and over and above what the attorney gets from the opposing party having lost the cause. Costs between party and party are those which the defeated party pays to the successful one.

Cottage is derived from the Saxon *cot*, and, in 4 Edw. 1, signifies a house without land annexed. By a later statute, 31 Eliz. c. 7 (repealed by 15 G. 3, c. 23), no man may build a house without four acres of land to it.

Council of the Church, an assembly of prelates duly convened for the purpose of defining questions of doctrine, or making regulations or canons in matters of discipline. They may be either *œcumenic* councils, representing the entire Christian church, or a *national* council, consisting of the prelates of a kingdom, assembled by its sovereign, or a *provincial* council, convoked by the bishop of a diocese. The earliest œcumenic council seems to have been that which was held at Jerusalem, A.D. 50, and which was attended by the apostles Peter, John, James, and Barnabas.

Counsel, an abbreviation for counsellor, or one who advises in

matters of law; the term has no plural number, and is used to denote one or more counsel. They are styled common law, equity, or chamber counsel, according to the nature of the business they transact.

COUNT signifies the declaration of the complaint in real action. As declaration is applied to *personal*, so count is applicable to real causes; count and declaration are often confounded, and made to signify the same thing. But real actions are now abolished.

COUNTIES are synonymous with shires, and form territorial districts, into which the kingdom is divided for better government, and the more easy administration of justice; so that there is no part of the kingdom which does not lie within some county, and every county is governed by its sheriff. Of these counties there are forty in England, and twelve in Wales. *Counties palatine* are Lancaster and Durham, which appear to have been originally invested with an independent jurisdiction (that of Chester has been abolished), because they were adjacent to the enemy's countries—Wales and Scotland; and that the inhabitants might have the administration of justice at home, and remain there to secure the frontier from invasion. Besides these counties, there are also *counties corporate*, which are certain cities and towns with land and territory annexed, having liberties and jurisdiction by grant from the king. These are thirteen in number, and, by the Reform Act, are, for the purposes of representation, included in the adjoining counties.

COUNTY RATES are certain assessments in every parish of a county, assessed by the justices assembled in quarter sessions, upon the full and fair annual value of the lands and tenements rateable to the relief of the poor; they are raised by the churchwardens and overseers, and paid to the treasurer of the county. They are applicable chiefly to the payment of coroners' fees for travelling; the repair of county bridges and highways adjoining, to the building and repair of county gaols and houses of correction, shire-halls, and county lunatic asylums; the charges of prosecuting felons and vagrants; and the expenses of bringing insolvent debtors before the circuit commissioners. Business relative to the assessment and application of the county rates must be transacted in open court, and notice thereof given by advertisement. All acts relative to the assessment and collection of the county rates were consolidated and amended in 1852 by 15 & 16 V. c. 81.

COVERTURE, anything that covers, as apparel or coverlet: but in law is applied to a married woman, as under the protection or power of her husband.

CRAVEN, a word of obloquy, by the pronouncing of which in the judicial combat, the vanquished acknowledged his guilt; upon that judgment was pronounced, and the recreant became infamous. It is of Anglo-Saxon derivation—cræfan, and means, to *crave*, to

beg, to implore: which to do of an adversary, however hopeless the conflict, was held, in the age of chivalry, dishonourable.

CREST, applied to devices set over a coat of arms.

CURSITOR BARON, an officer of the Court of Exchequer, who attended to open court prior to the commencement of each of the four terms; and on the seal days after each term to close the court. He administered the oath to the sheriffs, who are sworn by the court, and to several officers of revenue. Prior to 1833 he had various other duties, but subsequently the office became nearly a sinecure, and has been abolished.

CURTESY OF ENGLAND is where a man's wife seised in fee has issue by him *born alive*, which, by any possibility, may inherit, and the wife dies; when the husband holds the lands during his life, and is called tenant by the *curtesy of England*, because the custom does not prevail in any country not governed by English law.

CURTILAGE, a court-yard or piece of ground lying near and belonging to a dwelling-house.

CUSTOM is long-established usage, and, if it be general throughout the kingdom, forms part of the common or unwritten law. *General* customs are determined by the judges, but *particular* customs, used in some towns, boroughs, or cities, are determinable by a jury. The distinction between *custom* and *prescription* is this: *custom* is a local or general usage, not annexed to any person; *prescription* is a personal usage, and not annexed to any place.

CUSTOS ROTULORUM, the keeper of the rolls or records of the sessions of the peace. By 1 W. & M. c. 21, he may appoint the clerk of the peace, but not sell the office, on pain of forfeiture.

CUTLERY. By 59 G. 3, c. 7, articles of cutlery, edge tools, and hardware, requiring a cutting edge of wrought steel, or of iron and steel, and forged or manufactured with a hammer, and not in a mould or otherwise, may be stamped with the *figure of a hammer*, at any time after the forging and previous to the grinding or polishing; using such device on cutlery not made with the hammer subjects it to forfeiture, and the parties having it in possession, or exposing to sale, to a penalty of £5. No person to stamp on cutlery the word *London* or *London made*, or words of similar import, unless made within London, or twenty miles thereof, nor have such in possession, or for sale, under penalty of £10 and forfeiture of the articles.

D.

DANEGELT, a tax paid to the Danes, of 1*s.* and afterwards of 2*s.*, on every Lide of land, to be left at peace by these sea-rovers.

DAY, in law, is a space of twenty-four hours, commencing at midnight. For the duration of night in burglary and poaching, see pp. 693 and 722.

DAY RULE, a certificate of permission, which the court used to give to prisoners for debt to go beyond the rules of the prison, for the purpose of transacting business, upon application to the marshal or warden, and signing a petition to the court for that purpose.

DAYS IN BANK are certain days in term, when writs are returnable, or when the party shall appear in court upon the writ served. They are so called in opposition to days at *nisi prius*, when trial by jury took place.

DEACON, an ecclesiastical term, designating one of the orders in the church or priesthood, the lowest of the three: namely, bishops, priests, and deacons. The institution of deacons is described Acts vi. 3, 5, and was intended to relieve the apostles of the care of the poor, that they might devote themselves more entirely to the preaching of the gospel. In the English church, the name and form of ordination continue; but the peculiar duties of the office in collecting alms, and dispensing them among the poorer members of the church, have been lost sight of. A person may be ordained deacon at twenty-three. He may then become a chaplain in a private family; be a curate to a beneficed clergyman, or lecturer in a parish church; but, not having taken priest's orders, he cannot hold a benefice, or take an ecclesiastical preferment. There are deacons among the dissenters, who still discharge the duties of the office, but they are always laymen.

DEBENTURE, a written instrument of the nature of a bill of exchange, issuing out of a public office, charging government with the payment of a specified sum. Also a species of bond or mortgage, issued by railway and other public companies.

DECREE is the same as judgment at common law, and is the decision of a court of equity, pronounced on the hearing of a cause.

DECRETALS, a digest of the decrees of the popes, and of the canons of the councils.

DEDICATION DAY, the anniversary of the dedication of churches, formerly kept with much feasting and jollity.

DEDIMUS POTESTATEM is a writ issued out of Chancery, authorizing commissioners to take an examination. Also, when a justice intends to act under a commission of the peace, he sues out a writ of *dedimus potestatem* from the clerk of the crown in Chancery, empowering certain persons named therein to administer the oaths previously required.

DE FACTO, a thing actually done or existing. A king *de facto* is one in actual possession of sovereignty; a king *de jure* is one who has a *right* to a crown, but is out of possession.

DEMESNE. Such lands as were next to the lord's mansion, and

which he kept in his own hands for the support of his household and for hospitality, were called *demesne*.

DEMISE is applied to the conveyance of an estate, either in fee, or for life, or years; as applied to the crown of England it signifies the transmission (*demissio*) of the crown and dignity, by the death of a king to his successor.

DEMURRAGE is a compensation or allowance paid by the merchant or exporter to the owners of a vessel, in case she is obliged to wait for goods beyond her lay or running days (days allowed to load or unload a ship), either before or after the voyage, or while she is waiting for convoy. The time allowed for demurrage is usually stipulated in the charter-party; but when no time is fixed, it is expressed that the freighter shall be allowed the usual or customary time, which varies in different ports.

DEODAND is anything, as a horse or carriage, which, by accident, causes the death of a human being, and thereupon becomes forfeited to the queen, or the lord of the manor, as grantee of the crown; in both cases the deodand ought to be sold, and the money distributed to the poor. Deodand, as the derivation of the term imports, *Deo dandum*, was originally intended as an atonement to God for the untimely death of one of his creatures. Deodands are abolished by 9 & 10 V. c. 62.

DEPOSITION, in its general meaning, signifies the act of giving public testimony, but as restricted in law it signifies the testimony of a witness in a judicial proceeding reduced to writing. Informations upon oath, and the evidence of witnesses before magistrates and coroners, are reduced into writing in the words used by the witnesses, or as nearly thereto as possible. Evidence in the court of Chancery was formerly taken in written answers to interrogatories, also in writing.

DETAINER, a writ which lay against prisoners in the Marshalsea or the Fleet prison, directed to the marshal or the warden, commanding him to detain the prisoner until lawfully discharged from his custody.

DETINUE, the name of a writ which lies against one who, having goods delivered to keep, refuses to restore them.

DIES NON, several days in the different terms on which the courts at Westminster did not transact any business.

DIGNITARY of the church is a bishop, dean, archdeacon, canon, or prebendary.

DIGNITIES, or titles of honour, having been originally annexed to land, are considered as real property; being a sort of incorporeal hereditaments in which a man may have an estate.

DILAPIDATION, a term applied when an incumbent suffers the parsonage or outhouses to fall down, or decay, for want of necessary repairs.

DISTRINGAS, a writ directed to the sheriff, or other officer, com-

manding him to distrain for debt; or for appearance at pointed day; or for other purposes.

DIVIDEND, as applied either to the money which is divid *ratâ* among the creditors of a bankrupt, out of the amount r from his assets, or to the annuities or interest payable national debt, shares in companies, &c.

DOCKET, a short memorandum, or summary, affixed to papers, or a bill of direction tied to goods, showing the place and the person to whom, they are to be delivered. It i record in the courts containing an entry of judgment. *Str docket* is when a creditor gives bond to the lord chancellor, t his debtor to be a bankrupt.

DOCTORS' COMMONS, the college of civilians in London, f by Dr. Harvey, the Dean of Arches, for the professors of t law. In it were situated, prior to the transfer of the eccles jurisdiction and the opening of the Probate and Divorce Co Westminster, the residence of the judges of the spiritu admiralty courts. It was also the abode of the doctors civil law practising in London, who for diet and lodgin moned together, and hence the place is known as Doctors' Co To the college belonged a certain number of advocat proctors. In the common hall were held the principal ci courts.

DOME-BOOK, or *Liber Judicalis*, an ancient work, comp Alfred, supposed to comprise the local customs of the seve vinces of the kingdom. the penalties for offences, and the f judicial procedure. This book is supposed to have been e late as the reign of Edward IV., but is now lost. Mr. Tu of opinion that the laws of Alfred, which are found in \ collection, are the Dome-Book; if so, Mr. Coleridge, in a Blackstone, remarks that they do not form a code answerin expectation of a selection and arrangement of the local cus the provinces for general use. And Mr. Hallam observes th are neither numerous nor particularly interesting; and he a loose report of late writers, that Alfred compiled a gene for the government of his kingdom.

DOMESDAY is a very ancient record, made in the time of I., and now in the Exchequer, fair and legible, consisting volumes, a greater and a less; the greater containing a s all the lands in England, except the counties of Northuml Cumberland, Westmoreland, Durham, and part of Lan which it is said were never surveyed, and except Essex, and Norfolk, which three last are comprehended in th volume. It was begun by five justices, assigned for the pu each county, in the year 1081, and finished in 1086. Tl tion whether lands are ancient demesne or not is decide domesday of William, from whence there is no appeal.

DOMICILE means generally the home of a person, the place where he lives and lodges, and may be seen and communicated with. The domicile of a child or minor is that of the parents. An illegitimate child, having no father in contemplation of law, follows the domicile of its mother. A married woman follows the domicile of her husband; and a widow retains the domicile of her late husband till she acquires another.

DONATIO MORTIS CAUSA, a gift of personal property made by a person in contemplation of death under the implied condition the property shall revert to the donor in case he recover. In bequests of this kind there must be an *actual delivery* of the thing intended to be given; nothing will pass of which absolute possession cannot be given at the time by the donor: thus, stock receipts will not give the stock, for want of a transfer; but bank-notes, bills or notes, though payable to order, and unindorsed bonds and other securities, will pass. The delivery of a mortgage security to a daughter for the payment of money is a good *donatio mortis causa*, and the heir or executor is bound to give effect to the intent of the donor, 1 *Dow. N. S.* 1.

DONATIVE is a benefice merely given by the patron, without presentation, institution, or induction.

DONIS, *Statute de.* The 13 E. 1, c. 1, sometimes called the statute of "great men," as chiefly concerning them and conservative of their interests, revived in some measure the ancient feudal restraints which were originally laid on alienations, by enacting that in future the will of the donor be observed; and that estates given to a man and the heirs of his body should at all events go to the issue, if there were any; or, if none, should revert to the donor. It was intended to preserve the great estates of the nobility from dismemberment; but gradually, by means of legal fictions, prompted by the growth of commerce and new views of social benefit, these entailed estates have become, in particular modes, capable of alienation.

DOWER is that portion of property to which the widow is entitled, on the death of her husband, for the maintenance of herself and children. Dower is either by *common law* or *custom*. By the *first*, the widow is entitled to one-third of the estate during her life. The *second* varies with the custom of the place; in some manors it is more than one-third, as by *gavel-kind* it is one-half, and by custom of *free-bench* the widow may claim the whole during her life: but this extends only to copyholds. By 3 & 4 W. 4, c. 105, women married after Jan. 1, 1834, cannot claim dower out of land disposed of by their husbands in their lifetime, or by their will; and any partial encumbrances effected by their husbands are good against dower.

DRAWBACK, certain duties of the customs or excise allowed upon the exportation of some manufactures, or upon certain merchandise that has paid the import duty.

DREDGERMEN, fishers for oysters.

DROIT D'AUBAINE, an inhospitable claim, which existed in France, prior to the revolution, whereby the king, at the death of an alien, took possession of all his property, unless he had a peculiar exemption.

DROITS OF THE ADMIRALTY form a portion of the ancient hereditary revenues of the crown, arising chiefly from enemies' ships, detained previously to a declaration of war, or coming into port ignorant of the commencement of hostilities, or those taken by non-commissioned captors, and the proceeds of wrecks, and goods of pirates.

DROVERS are those who buy cattle in one market to sell in another. They are traders subject to the bankrupt laws. The term is also commonly applied to those whose business is to conduct or drive cattle to or from the markets; and in the metropolis they are divided into classes, as country, butcher, and London drovers. They are required to wear a ticket, and renew their licenses yearly; to use no other stick than such as shall be approved and marked by the clerk of the market, under penalty of 40*s*.

E.

EASEMENT a convenience which one neighbour has of another, by a grant or prescription; as a way through his lands, or a watercourse over his grounds.

EASTER SUNDAY is the first Sunday after the full moon that happens next after the 21st of March: it is a movable festival, held in commemoration of the Resurrection, and, being the most important and ancient in observance, governs the other movable feasts throughout the year. The limits within which this day must fall are between the 22nd of March and the 25th of April inclusive, which, before the commencement of the terms, was definitely fixed by 1 W. 4, c. 70, made often a long, uncertain, and inconvenient interval for the opening of the courts, and the progress of judicial business.

EJECTMENT is a possessory action, by which the title to lands and tenements may be tried, and possession recovered.

ELEGIT, a writ of execution so called, directed to the sheriff, commanding him to take in execution, but not to sell, the lands and goods of debtor; these the creditor holds until his debt be satisfied, during which time he is *tenant by elegit*. By 2 V. c. 110, s. 11, the sheriffs to whom an elegit may be directed, shall deliver execution of all lands and tenements, freehold or copyhold, over which the debtor has any disposing power for his own benefit, at or after the time of entering up judgment; which lands and tenements are to be held subject to such account in the court out of

execution issues as a tenant by elegit is now subject to
thus sanctioning by enactment what had long been the

If the sheriff or coroner, who ought to return the
party to a suit or interested therein, the venire shall be
two clerks of the court, or to two persons of the county,
the court and sworn; and these two, who are called
electors, shall name the jury.
inty of, is only a royal franchise, and not a county
hough sometimes improperly reckoned as such.
IG DAYS. So called because our ancestors, when they
ier sat in ashes, or strewed them on their heads; they
t antiquity in the church, and are observed on Wednes-
y, and Saturday next after Quadragesima Sunday (or
unday in Lent), after Whit-Sunday, Holyrood Day, in
, and St. Lucy's Day, about the middle of December:
he calendar, these weeks are called *Ember Weeks*.
ENTS signify the profits of land sold; but the word is
used more largely for any products that arise naturally
round, as grass, fruit, and other crops.
E, a title of sovereignty, and, among the Romans, con-
elebrated and victorious generals.
HISE, to give rights, make free, or incorporate in any

LANGUAGE. By an arbitrary mandate of William I.,
and arguments in courts of justice were directed to
an-French: the writs, records, and judgments, how-
ontinued in Latin, as they had been from the earliest
are to be found of them. It was not till the passing
e 4 G. 2, c. 26, that all proceedings in courts of
irected to be in the English language.
3. In *Murray* v. *Assignees of Heath*, *M.T.* 1827,
d that there existed a general practice among
eserving eight copies of every engraving for their
t; for the plaintiff, that the engraver had no right
umber of copies *for sale*.
By two statutes of Henry VIII. no deed of
e is valid, to pass an estate of inheritance, unless
olled in one of the courts at Westminster, or in the
e land lies, with the custos rotulorum, within six
date. 5 Eliz. c. 26, authorizes the courts in the
to enrol bargains and sales in like manner.
entail of an estate, and for some other purposes,
led in Chancery.
e the succession to an estate is limited or tied
itions; as to the heirs of a man's body begotten,
. The chief object in this mode of settling
cue from alienation great family possessions.

There are two kinds of entailed estates, *general* and *sp*
When lands are given to a man and the heirs of his body w
restriction, this is called an estate tail general; but if the
limited to certain heirs, exclusive of others, this is an estat
special. Entail estates are also distinguished into estates tail
and estates tail *female*. In the former case, the estate is li
to, or descendible only to, males; in the latter only females in

ESCHEAT, to take place, or be available.

EPIPHANY, signifies appearance, and is the day when th
appeared to the wise men of the East, generally called T
Day.

ERIAGH. By the Irish brehon law, in cases of murde
brehon or judge compounded between the murderer and the f
of the deceased who prosecuted, by causing the malefactor t
to them, or to the child or wife of him that was slain, a r
pense, which was called an *eriach*. It answers to the a
Were in England.

ESCHEAT is where land or tenements, from want of heirs, or
forfeiture, escheat or fall back to the sovereign or lord of th
as the original grantor. Escheats are of two kinds: 1.
**forfeitures which belong to the queen in right of her prerog
upon the defect of heirs to succeed to the inheritance. 2.
which belong to every lord of the manor, by reason of his seig
under a royal grant. The law of escheat presumes, upon the f
system, that the blood of the person last seised in fee simp
by some means or other extinct: and since none can inheri
estate but such as are of his consanguinity, it follows, as a re
consequence, that when such relationship is extinct, the inheri
itself must fail, the land must become what the feudal w
denominate *feodum apertum*, and must revert again to the l
the fee, by whom, or by those whose estate he has, it was gi**

ESCROW is a deed delivered to a third person to hold until
future condition be performed by the grantee, and then
delivered to him.

ESCUAGE, a kind of knight service, called service of the sh
whereby the tenant was bound to follow his lord into the wa
his own charge. Also, it has been sometimes intended as a
pensation, taken for actual military service.

ESPOUSALS, the contract or mutual promises between a man
a woman to marry each other.

ESSOIGN, an excuse or plea of one summoned, and who is
prepared to answer an action, or to perform suit at a court b
by reason of sickness or other cause of absence. *Essoign de
term* is the first day of the term on which the courts are ope
according to ancient custom, to take essoigns or excuses, for
as do not appear according to the summons of the writ; when
is called the *excuse* or *essoign day* of the term.

ESTOPPEL is an impediment or bar of an action arising fro

act, or where he is forbidden by law to speak against
l ; for by his act or acceptance he may be *estopped* to
ak the truth.

any beast found within a manor or lordship, and not
hich case, if it be cried in the two next market towns
ket days, and is not claimed by the owner within a
ay, it belongs to the lord of the manor. If the cattle
proclaimed, the owner may take them at any time.
beast is proclaimed as the law directs, if the owner
year and a day, he shall have it again, but must pay
keeping. But if any other person find and take care
property, not being entitled to it as an *estray*, the
ecover it or its value, without being obliged to pay the
its keeping.

If the condition of a recognizance be broken, such
becomes forfeited, and, being *estreated*, or extracted
ord, and sent up to the exchequer, the fine remains
by exchequer process.

R BILLS. These are issued from the exchequer, in
of acts of parliament passed every session. The first
n 1696, and being intended as a temporary substitute
iring the recoinage at that period, some of them were
) and £5. There are none issued now under £100,
them are for £500, £1,000, and still larger sums.
terest at a certain rate per day for £100, varying with
r less amount of unemployed capital in the market ;
istributed among those who are willing to advance
they form a kind of circulating medium. After a
they are received in payment of taxes or other moneys
iment, and the interest due on them at the time is
he payment. New exchequer bills are frequently
charge of former ones, and they are often funded by
ital in some of the public stock, on certain terms, to
as are willing to accept them.

, *Bill of.* The name of a bill by which parliament,
part of the reign of Charles II., sought to exercise
altering and limiting the succession to the crown, by
the king's brother and presumptive heir, the Duke of
ground of his being *a papist ;* it passed the House of
it was rejected in the House of Lords, the king having
ed that it never should receive the royal assent.

MINISTRY or ADMINISTRATION is a political term,
the higher and responsible class of public officials, by
ief departments of the government of the kingdom
red, and whose tenure of office depends on the confi-
ajority of the House of Commons. They are supp-
reed on all matters of general policy, except such as
y left open questions ; to this extent, at least, that no

There are two kinds of entailed estates, *general* and *special*. When lands are given to a man and the heirs of his body without restriction, this is called an estate tail general; but if the gift is limited to certain heirs, exclusive of others, this is an estate tail special. Entail estates are also distinguished into estates tail *male*, and estates tail *female*. In the former case, the estate is limited to, or descendible only to, males; in the latter only females inherit.

ENURE, to take place, or be available.

EPIPHANY, signifies *appearance*, and is the day when the star appeared to the wise men of the East, generally called Twelfth Day.

ERIACH. By the Irish brehon law, in cases of murder, the brehon or judge compounded between the murderer and the friends of the deceased who prosecuted, by causing the malefactor to give to them, or to the child or wife of him that was slain, a recompense, which was called an *eriach*. It answers to the ancient *Were* in England.

ESCHEAT is where land or tenements, from want of heirs, or from forfeiture, escheat or fall back to the sovereign or lord of the fee, as the original grantor. Escheats are of two kinds: 1. Those forfeitures which belong to the queen in right of her prerogative, upon the defect of heirs to succeed to the inheritance. 2. Those which belong to every lord of the manor, by reason of his seigniory, under a royal grant. The law of escheat presumes, upon the feudal system, that the blood of the person last seised in fee simple is by some means or other extinct: and since none can inherit his estate but such as are of his consanguinity, it follows, as a regular consequence, that when such relationship is extinct, the inheritance itself must fail, the land must become what the feudal writers denominate *feodum apertum*, and must revert again to the lord of the fee, by whom, or by those whose estate he has, it was given.

ESCROW is a deed delivered to a third person to hold until some future condition be performed by the grantee, and then to be delivered to him.

ESCUAGE, a kind of knight service, called service of the shield, whereby the tenant was bound to follow his lord into the wars at his own charge. Also, it has been sometimes intended as a compensation, taken for actual military service.

ESPOUSALS, the contract or mutual promises between a man and a woman to marry each other.

ESSOIGN, an excuse or plea of one summoned, and who is not prepared to answer an action, or to perform suit at a court baron, by reason of sickness or other cause of absence. *Essoign day of term* is the first day of the term on which the courts are opened, according to ancient custom, to take essoigns or excuses, for such as do not appear according to the summons of the writ; whence it is called the *excuse* or *essoign day* of the term.

ESTOPPEL is an impediment or bar of an action arising from a

man's own act, or where he is forbidden by law to speak against his own deed; for by his act or acceptance he may be *estopped* to allege or speak the truth.

ESTRAY is any beast found within a manor or lordship, and not owned; in which case, if it be cried in the two next market towns on two market days, and is not claimed by the owner within a year and a day, it belongs to the lord of the manor. If the cattle were never proclaimed, the owner may take them at any time. And where a beast is proclaimed as the law directs, if the owner claim it in a year and a day, he shall have it again, but must pay the lord for keeping. But if any other person find and take care of another's property, not being entitled to it as an *estray*, the owner may recover it or its value, without being obliged to pay the expenses of its keeping.

ESTREAT. If the condition of a recognizance be broken, such recognizance becomes forfeited, and, being *estreated*, or extracted from the record, and sent up to the exchequer, the fine remains to be levied by exchequer process.

EXCHEQUER BILLS. These are issued from the exchequer, in consequence of acts of parliament passed every session. The first was issued in 1696, and being intended as a temporary substitute for money during the recoinage at that period, some of them were so low as £10 and £5. There are none issued now under £100, and many of them are for £500, £1,000, and still larger sums. They bear interest at a certain rate per day for £100, varying with the greater or less amount of unemployed capital in the market; and, being distributed among those who are willing to advance their value, they form a kind of circulating medium. After a certain time they are received in payment of taxes or other moneys due to government, and the interest due on them at the time is allowed in the payment. New exchequer bills are frequently issued in discharge of former ones, and they are often funded by granting capital in some of the public stock, on certain terms, to such holders as are willing to accept them.

EXCLUSION, *Bill of*. The name of a bill by which parliament, in the latter part of the reign of Charles II., sought to exercise the right of altering and limiting the succession to the crown, by setting aside the king's brother and presumptive heir, the Duke of York, on the ground of his being *a papist*; it passed the House of Commons, but was rejected in the House of Lords, the king having openly declared that it never should receive the royal assent.

EXECUTIVE MINISTRY or ADMINISTRATION is a political term, applicable to the higher and responsible class of public officials, by whom the chief departments of the government of the kingdom are administered, and whose tenure of office depends on the confidence of a majority of the House of Commons. They are supposed to be agreed on all matters of general policy, except such as are specifically left open questions; to this extent, at least, that no

one of them openly opposes or supports a measure supported or opposed by the others. The cabinet forms a select portion of the administration, rarely less than ten or exceeding fifteen in number, including the premier and his chief colleagues. It being ostensibly and directly responsible for public affairs, the deliberations are always considered confidential, and kept secret even from the other members of the ministry less eminent in office.

EXECUTORY DEVISE is where a future interest is devised, that vests not at the death of the testator, but depends on some contingency, which must happen before it can vest. It is an established rule that an executory devise is good if it must necessarily happen within a life or lives in being, and twenty-one years, with, perhaps, the fraction of another year (allowing for the time of gestation). The subject has undergone much learned investigation in determining the validity of the will of Mr. Thellusson, an eminent merchant of the city of London. This gentleman had three sons, to whom he bequeathed some inconsiderable legacies; the rest of his immense property, consisting of lands of the annual value of £4,500 and £600,000 in personal property, he devised to trustees, for the purpose of accumulation during the lives of his three sons, and of all their sons who should be living at the time of his death, or be born in due time afterwards, and during the life of the survivors of them. Upon the death of the last, the fund is directed to be divided into three shares, one to the eldest male lineal descendant of each of his three sons; upon the failure of such a descendant, the share to go to the descendants of the other sons; and upon the failure of all such descendants, the whole to go to the sinking fund. When he died he had three sons living, who had four sons living, and twin sons were born soon after. Upon calculation, it appeared that, at the death of the survivor of these nine, the fund would probably exceed nineteen millions; and, upon the supposition of only one person to take, and a minority of ten years, that it would exceed thirty-two millions. This extraordinary will did not originate from any dissatisfaction which the testator's family had ever occasioned, though he was resolved that none of his descendants who were *born* or in *embryo* when he died, should ever enjoy any part of his property. The Chancellor, Lord Loughborough, Lord Alvanley, then Master of the Rolls, Judges Buller and Lawrence, after hearing counsel for several days, were unanimously of opinion that the will was within the prescribed limits of executory devises. But to prevent similar instances of eccentricity, the 39 & 40 G. 3. c. 98, which does not apply to Ireland, was passed, by which is prohibited any settlement of property for accumulation for any longer term than the life of the settler, the period of twenty-one years from his death, the minority of any person living or *en ventre sa mère* at the time of his death, or the minority of any person who would be beneficially entitled to the profits under the settlement if of full age. An act has also been obtained to alter in

some respects the dispositions of this singular will, which, from the litigation it originated, has been as productive to lawyers as many German principalities to their sovereigns.

EXEMPLIFICATION, *of Letters Patent*, is a copy or transcript of the letters patent made from the enrolment thereof, and sealed with the great seal of England; which exemplification may be shown or pleaded as the letters patent themselves.

EX-OFFICIO is an act done in execution of a power which a person has by virtue of his office. *Ex-officio informations* are informations at the suit of the queen, filed by the attorney-general, by virtue of his office, without applying to the court wherein filed for leave, or giving the defendant an opportunity of showing cause why they should not be filed.

EX-PARTE is an act, deed, statement, or commission by one party only, without the participation of the other.

EX-POST FACTO is used to express something posterior to that which has previously happened; as an *ex-post facto* law is a law made subsequently to the offence it is intended to restrain or punish.

EXTENT is a writ at the suit of the queen, or it may be at the suit of a crown debtor. In the former case it is styled an extent *in chief;* in the latter, an extent *in aid*. It is of the nature of a writ of execution, and binds all the defendant's lands and property; the body may also be taken, unless otherwise directed. A writ of error on an extent lies in the exchequer, as also in parliament.

EXTRA-PAROCHIAL signifies to be out of the bounds or limits of a parish; which extra-parochial places were formerly privileged and exempt from the duties of a parish, though this has been altered in many cases by statute. Thus, extra-parochial lands may signify lands newly left by the sea, not taken into any parish.

EYRE, *Justices in*, from the French *eire*, that is, *iter*, were the origin of the present justices of assize. They were appointed A.D. 1176, with a delegated power from the king to make their circuits round the kingdom once in seven years, and afterwards, by Magna Charta, once every year. Having become a sinecure, they were abolished by 57 G. 3, c. 61, on the termination of existing interests.

F.

FACULTY, a privilege granted by special indulgence to do that which the law has prohibited. For making these grants there is a court under the Archbishop of Canterbury, called the *Court of Faculties and Dispensations*, which has power to grant dispensation for persons to marry without banns first asked, for a deacon under age to be ordained, or the like.

FAIR, a greater sort of market instituted for the convenience of traffic, so that traders may be furnished with the commodities they want, at a particular spot, without the trouble and loss of time which must necessarily attend travelling from place to place: and

as this is a matter of universal concern to the commonwealth, no person can claim a fair or market unless it be by grant from the king, or by prescription which presumes such a grant, 2 *Inst.* 220. —*Fairs in the Metropolis.* By 2 & 3 V. c. 47, the commissioners of the metropolitan police force have power over fairs held within the distance of fifteen miles from Charing Cross, and may suppress such as are held without charter or prescription. But the owner or occupier of the ground upon which the fair is held may enter into recognizance to try the *legality* of the fair; and in that case the commissioners cannot adopt measures for its suppression till the court of Queen's Bench has affirmed or negatived its legal existence. By the same act, all business and amusements at fairs, in the neighbourhood of London, must cease at eleven in the evening, and not recommence earlier than the hour of six in the morning. Any house, shop, room, booth, standing, tent, caravan, or other place in the fair, being open within the prohibited hours, is subject to a penalty of £5; and any person present in such house, room, booth, &c., not removing therefrom at the request of the constable, is liable to a penalty of 40*s*. By 31 & 32 V. c. 106, where any fair is held or purposed to be held on any ground within the metropolitan police district, other than that on which a fair has been held during each of the seven years immediately preceding, it is competent for the commissioner of police to direct a superintendent to summon the owner or occupier of the ground upon which the fair is held to appear before a magistrate to show his right to hold such fair, and if the summoned party does not attend or show cause that the fair is lawfully held, the magistrate to declare in writing the fair to be unlawful, and the commissioner to give notice thereof, and after the lapse of six hours may direct a constable to remove any booth, standing, or tent, and every carriage of whatever kind, and every person erecting any booth, standing, or tent. Any person proceeding to the ground for the purpose of gambling or amusement are liable, on conviction, to a penalty of ten pounds.

The Fairs Act, 1871 (34 & 35 V. c. 12), provides, that in case it shall appear to the Secretary of State for the Home Department, upon representation duly made to him by the magistrate of any petty sessional district within which any fair is held, or by the owner of any fair in England or Wales, that it would be for the convenience and advantage of the public that any such fair shall be abolished, it shall be lawful for the said Secretary of State for the Home Department, with the previous consent in writing of the owner for the time being of such fair, or of the tolls or dues payable in respect thereof, to order that such fair shall be abolished accordingly.

The Fairs Act, 1873, 36 & 37 V. c. 37, repeals 31 & 32 V. c. 51, and defines the term "owner" as any person or body of commissioners or body corporate entitled to hold any fair, whether in respect of the ownership of any lands or under any charter, letters

patent, or otherwise. It does not apply to Scotland or Ireland. S. 6 empowers the Home Secretary, upon representation by the magistrates of the petty sessional district within which any fair is held, or by the owner of any fair, that it would be for the convenience of the public that such fair should be held in each year on some day other than that on which it used to be held, or on the day on which such fair is used to be held, and any subsequent or preceding day or days, or on or during a less number of days than those on which such fair is used to be held, to order that such fair shall be held on such other day or days, and any preceding or subsequent day or days, or on or during any less number of days, as he shall think fit. The notice of such representation, and the time when the Home Secretary intends to take the same into consideration, must be given to the owner of the fair or to the clerk of the magistrates, as the case may be, and must also be published once in the *London Gazette*, and in three successive weeks in some one and the same newspaper published in the county, city, or borough in which such fair is held; or if there be no such newspaper, then in some newspaper published in some adjoining county. Notice of any such order by the Home Secretary as aforesaid must also be published once in the *London Gazette*, and also in a newspaper as above. All rights, &c., of the owner to remain good.

Fees. All fees in courts of justice allowed by act of parliament are established fees; and the several officers entitled to them may maintain actions of debt to recover them. All such fees as have been allowed by the courts of justice to their officers, as a recompense for labour and attendance, are established fees; and the parties cannot be deprived of them without act of parliament. But where a fee is due by *custom*, such custom, like all others, must be reasonable. This is the law of fees; but fees in the superior courts of common law and equity have been nearly or entirely abolished, and stamp duties substituted, the officers being paid by fixed salaries.

Feigned Issue is when an action is feigned to be brought, by mutual consent of the parties, to determine some disputed right, without the formality of pleading, and thereby save time and costs in the decision of a cause.

Feme Covert, a married woman. *Feme sole*, a single or unmarried woman. Hence a married woman who, by the custom of London, trades on her own account, without the husband being liable for her dealings, is called a feme sole trader, because, with respect to her trading, she is the same as a single woman. The custom of London is the general law of France. With our neighbours, any married woman can hold property irrespective of her husband or his creditors. The same principle has, to some extent, been introduced into English law by the Married Women's Property Act, 1870. *See* p. 413.

FEOFFMENT is a grant of lands to another in fee, to him and his heirs for ever, by the actual delivery of seisin or possession of the thing granted; and in every feoffment the granter is called the *feoffor*, and he that receives is the *feoffee*. It is the most ancient mode of conveying land, to which *livery of seisin* is necessary to give it complete effect. Livery of seisin is the feudal investiture or delivery of the possession of the land or tenement to another, by giving him the latch or key, a turf or twig, or doing such other act before witnesses, as clearly puts the party in possession. But the practice is rarely used, and the formality of delivery of seisin on the spot has been superseded by a simple deed of grant, 8 & 9 V. c. 106.

FERÆ NATURÆ, beasts and birds of a wild nature, in opposition to the tame and domesticated.

FERRY is a liberty, by prescription of the king's grant, to have a boat for passage, to convey horses and men, for reasonable toll, over a river; and such grant precludes another from setting up a ferry in the same neighbourhood. For the purpose of embarking and disembarking his passengers, the owner of a ferry must have a right to use the land on both sides the water; but he need not have any property in the soil on the other side. 6 *Bar. & Cres.* 703.

FIAT, an order or warrant for a thing to be executed. It was a term till lately of frequent use, having been substituted for a commission of bankrupt. The modern term is *adjudication*.

FIERI FACIAS, a judicial writ, when judgment is had for debt or damage, by which the sheriff is commanded to levy the same on the goods and chattels of the defendant.

FIFTEENTHS were anciently temporary aids, levied on personal property, by grant to the king from parliament.

FINE. This, in its origin, was an amicable composition, by leave of the courts, whereby lands were acknowledged to be the right of one of the parties, and by it all the parties were barred who did not claim within a short period. But 3 & 4 W. 4, c. 74, abolishes fines and recoveries, and substitutes more simple modes for assuring lands and barring estates tail. *Fine* is also a sum of money paid for the grant of lands by lease, or on the admission to a copyhold interest. *Fine* signifies, too, a pecuniary satisfaction awarded by courts of justice for offences against the laws.

FINES. Offenders in the London prisons, under sentence of imprisonment for long or short periods, are or used to be so denominated.

FISHERY, *Free*, is an exclusive right of fishing in a public stream or river; this is a royal franchise, and must be at least as old as the reign of Henry II., no such franchise being grantable by the express provision of Magna Charta.

FLEET, a long-noted prison in London, late fronting on Farringdon Street, and so called from a stream or ditch that formerly flowed uncovered in the front of it. It was a place of considerable

antiquity, and was the receptacle for the victims of the Court of Star Chamber. When that tribunal was abolished, the Fleet was appropriated to debtors and persons committed for contempt of the courts of Chancery, Common Pleas, and Exchequer; but these are now confined elsewhere, and the Fleet itself has been pulled down. Till the passing of the Marriage Act, in 1755, marriages were celebrated in the Fleet, with much the same forms and solemnity as till recently were observed at Gretna Green.

FLOTSAM, goods found floating on the sea; these belong to the queen or lord of the manor, unless claimed by the owner within a year and a day.

FOLKMOTE, an ancient assembly of the people to deliberate on matters of public interest; but the nature and constitution of the Folkmote have not been very precisely ascertained.

FORMÂ PAUPERIS is where any person has just cause of suit, and is so poor that he can make oath he is not worth £5 after all his debts are paid, and excepting the property in question: upon oath made of this fact, and a certificate from a barrister that he has good cause of action, the court will permit him to sue *in formâ pauperis*, without paying any fees to counsel, attorneys, or clerks in court. If a cause go against a person suing *in formâ pauperis* he is liable to imprisonment for the costs of the defendant. And it has been determined and was confirmed in *Wakely* v. *Millard*, E. T. 1846, that a defendant in a civil action cannot be admitted to *defend* as a pauper, but under some act of parliament; and the statutes of the 11 and 23 of H. 8 contain no provision in behalf of the defendant, but merely enable the plaintiff to sue in that form. But persons arrested on a *capias*, or information relating to the customs, may be admitted to defend *in formâ pauperis*. And see 23 & 24 V. c. 149.

A FORTIORI, that is, with greater reason or stronger argument.

FRANKALMOIGN is a species of tenure whereby a religious corporation held lands of the donor to them and their successors for ever. The nature of the service they were bound to perform for these lands is not strictly defined further than to pray for the souls of the donor and his heirs. It is the tenure by which almost all the religious houses held their lands; and by which the parochial clergy and many ecclesiastical and eleemosynary foundations hold them at this day; the nature of the service being, upon the reformation, altered and made conformable to the protestant doctrines of the Church of England.

FRANK-PLEDGE is an ancient pledge or security, by which the freemen of a neighbourhood bound themselves to mutual fidelity to the king, and due observance of the laws. When any offence was committed, it was forthwith inquired to *what pledge* the offender belonged, and then those of that pledge either produced the offender within thirty-one days, or satisfied for his transgression. The custom of frank-pledge was so strictly observed, that the sheriff at

cities and towns of little importance.

FUNDED DEBT is that immense capital or
the state which, from time to time, has be
and which constitutes the *public debt*: and
or their assigns receive interest or annuities

G.

GABELLE is, strictly, a tax on salt, but i
any other tax, or to rent, custom, or servic

GAGE, a pledge or pawn.

GARNISH, certain sums which were form
the admission of prisoners. All such exa
hibited by the Gaol Act, 4 G. 4, c. 62, and

GARTER, *Knight of the.* The first per
peerage of the realm is a knight of the ord
the Garter, first instituted by Edward III,

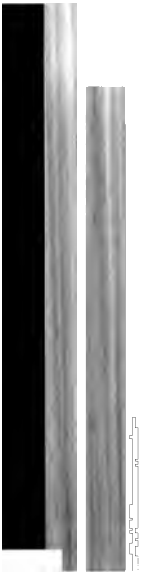
GEMOTE, a Saxon word, signifying a con
court.

GENTLEMAN is one who bears coat armou
adds gentility to a man's family, 2 *Inst.* 667
stone (1 *Com.* 406), it is a student at law,
one who professes the liberal sciences, or
manual labour, and bear the charge and co

person, entered the plaintiff's close to glean; in the *second*, the defendant's plea was the same as before, with the addition that he was an inhabitant *legally settled within the parish;* to the plea in each case there was a general demurrer. Mr. Justice Gould delivered a learned judgment in favour of gleaning, but the other three judges were clearly of opinion that "this claim had no foundation in law; that the only authority to support it was an extra-judicial dictum of Lord Hale; that it was a practice incompatible with the exclusive enjoyment of property, and was productive of vagrancy and many mischievous consequences." Notwithstanding these sage conclusions, the practice continues to be generally allowed in England, and it has at least the sanction of the Mosaic laws, *Levit.* xix. 9, and xxiii. 22. In some parts the poor are allowed to glean before the harvest is carried, but more generally not till afterwards. At a meeting of farmers in Hertfordshire, Aug. 11, 1845, resolutions were come to fixing the hours of the day during which gleaning would be permitted, and excluding from the liberty to glean able-bodied labourers between 18 and 60 years of age.

GLEBE is the land belonging to a parish church, or of which the rector or vicar is seised in right of the church.

GOLD. Neither gold nor silver is adapted to the purposes of coin or commerce, except to beat into leaf gold or silver, till it has been hardened by the admixture of some inferior metal, as copper or brass. Though most nations differ in the quantity of such alloy, as well as the same place at different times, yet in England the standard for gold and silver coin has for a long time been as follows: namely, twenty-two parts of fine gold and two parts of copper, being melted together, shall be esteemed the true standard for gold coin. And that eleven ounces and two pennyweights of fine silver and eighteen pennyweights of copper, being melted together, shall be esteemed the true standard for silver coin, called *sterling* silver. By 7 & 8 V. c. 22, all gold wares of the standard fineness of 22 carats of fine gold in every pound troy must, since Oct. 1, 1844, be marked with a crown and the number 22, instead of the lion passant. By 17 & 18 V. c. 96, the queen in council is empowered to allow any standard for gold wares not less than one-third part in the whole of fine gold, and to appoint a stamp setting forth in figures the actual fineness, according to the standard so declared, of every gold vessel, plate, and manufacture of gold. Such gold wares as are by statute now in force not liable to be assayed, are nevertheless to be assayed and marked as one of the standards authorized by law. Old statutes relating to the standards of gold remain in full force. Any assayer or other officer marking gold ware of a lower standard with the mark appropriated to a higher standard incurs a penalty of £20 and dismission from his office; and all wares so stamped improperly are liable to seizure. By 18 & 19 V. c. 60, gold wedding rings



appertaining to husbandry.

GREAT SEAL. The office of lord chancellor is c
sovereign simply delivering the great seal to the p
hold it, verbally addressing him by the title whi
He then takes the oath of office. The great seal i
emblem of sovereignty—the *clavis regni*—the onl
which, on solemn occasions, the will of the sover
pressed. Absolute faith is universally given to
purporting to be under the great seal, as having
with it by the authority of the sovereign. When,
or on a change of the royal arms or style, an orde
sovereign in council for using a new great seal, th
licly broken. The ceremony of breaking the seal
sovereign giving it a gentle blow with a hammer, a
supposed to be broken, when, according to Lord Ca
the Lord Chancellors, vol. i. p. 261), it has lost al
becomes the perquisite of the chancellor for the ti

GREEN CLOTH. A court of the queen's house
the peace, &c., within the verge of the palace, c
lord steward, comptroller, and other officers,
from the *green cloth* covering the table. Its juri
abolished.

GREEN WAX. Estreats delivered to the sheriffs
quer, under the seal of that court, impressed in *gr*

GROATS, the allowance to prisoners kept in exec
vulgarly so termed, it being formerly *fourpence* pe

GROCERS, in 37 G. 3, includes merchants who *e*

and industry of the community were enrolled. They made by-laws for the regulation of their members; had their common hall and property; and were mostly selected as the trustees of charitable bequests.

GYPSIES, or, as they are sometimes termed, *Egyptians*, from the supposed place of their origin or appearance, are bands of vagrants or impostors, who seem first to have attracted notice in Europe about the beginning of the fifteenth century. They use a peculiar language, and support themselves by handicraft arts, begging, pilfering, and fortune-telling. The laws were formerly severe against them, and Sir Matthew Hale states that no less than thirteen gypsies were executed at one Suffolk assizes, a few years before the restoration. It was only by 1 G. 4, c. 116, that the 5 Eliz. c. 20, which made it felony to associate with gypsies for one month, or for gypsies to be found in the kingdom for the same period, was repealed. They are now punishable under the Vagrant Act. They are much diminished in number, owing to the progress of inclosures and general advance in civilization.

H.

HABEAS CORPUS, a writ of right, directed to the sheriff or other officer, commanding them to bring up the body of the prisoner in their custody, and is available to all persons, whether natives or aliens. There are several species of this writ, but the most important is that which protects the subject from arbitrary imprisonment.

HÆRETICO COMBURENDO. A writ that lay against a heretic, who, having been convicted of heresy by the bishop, was delivered over to the secular power to be burnt. It was abolished by the 21 C. 2, though we have instances of its being put into execution upon two Anabaptists so recent as the 17 Eliz., and upon two Arians in the 9 James 1.

HALF BLOOD is where the relationship proceeds not from the same *couple* of ancestors, which constitutes a kinsman of the *whole* blood, but from a single ancestor only; as where two brothers descend from the same father and not from the same mother, or the contrary.

HALL, the Saxon term for mansion-house or dwelling. It is also applied to a court baron; and hence *town hall* and *shire hall*. Hence, too, the hallmote court of London. A *common hall* is a meeting of the liverymen of the city of London at Guildhall for the election of lord mayor, sheriff, &c., and other public purposes.

HANAPER OFFICE, one of the offices formerly belonging to the court of Chancery, but abolished by 5 & 6 V. c. 103, and duties transferred. Writs relating to the business of the subject and their returns were anciently kept in a hamper, *in hanaperio;* and the others, relating to matters in which the crown was interested,

were preserved in a little sack or bag, *in parvâ bagâ ;* hence arose the designation of the *hanaper* and *petty bag office*, both of which belonged to the common law court in Chancery. Certain offices in the Petty Bag are regulated by 12 & 13 V. c. 109, which requires the clerk of the Petty Bag to execute his duties in person, not by deputy, unless in case of sickness.

HANDSALE. Anciently, among all the northern nations, shaking of hands was held necessary to bind a bargain, a custom which is still frequently observed in verbal contracts. A sale thus made was called *handsale ;* till, in process of time, the same word was used to signify the *earnest money* given after the shaking of hands, or instead thereof; in the north it is pronounced *hansel.*

HANSE, an old Gothic word, signifying a society of merchants, for mutual assistance and co-operation ; hence the *Hanse Towns.*

HANSE TOWNS. Towards the middle of the thirteenth century the nations round the Baltic were extremely barbarous, and infested that sea with their piracies ; this obliged the cities of Lubeck and Hamburgh, soon after they began to open a trade with these people, to enter into a league of mutual defence. They derived such advantages from this union, that other towns acceded to the confederacy, and in a short time eighty of the most considerable cities scattered through the countries which stretch from the bottom of the Baltic to Cologne, on the Rhine, joined in the famous *Hanseatic League*, which became so formidable that its alliance was courted and its enmity dreaded by the greatest monarchs. The members of this powerful association formed the first systematic plan of commerce known in the middle ages, and conducted it by laws enacted in their general assemblies. Such, however, are the vicissitudes of commercial greatness, that scarcely any vestige now remains of the great wealth said to have been possessed by the Hanse Towns ; and it is even uncertain where some of them are situated, or to what towns in Europe the Latin names given to them belong.

HART. A stag, or male deer of the forest, five years old.

HEADBOROUGH was anciently the head of the frank-pledge in boroughs, or the chief of the ten pledges or tithing ; the other being denominated *landborows*, or inferior pledges. Headborough is now a kind of constable or peace officer.

HEARTH-TAX, a duty imposed by 14 Car 2, c. 2, on every hearth and stove of every dwelling in England and Wales. It was much complained of as oppressive, and repealed by 7 & 8 W. 3, c. 18, which substituted an equally grievous duty on windows. This has since been repealed, and the present house duty substituted.

HEGIRA, an epoch from which the Turks and Arabians compute events, commencing from the day of Mahomet's flight from Mecca to Medina, which was July 16, A.D. 622.

HEIR-LOOMS are such goods and personal chattels as, contrary to

the nature of chattels, go by *special* custom to the heir along with the inheritance. The termination *loom* is of Saxon origin, in which language it signifies a *limb* or *member*; so that an heir-loom is nothing more than a limb or member of the inheritance. Family pictures, plate, and the like, are often annexed to land, as or in the nature of heir-looms.

HENCHMAN, a running footman anciently attendant upon persons of quality.

HEPTARCHY. The kingdom of England, under the Saxons, was divided into a heptarchy, consisting of seven independent kingdoms, peopled and governed by different colonies of Jutes, Angles, and the like; these were all reduced into one kingdom by Egbert, King of the West Saxons, and grandfather of Alfred, in the year 827 or 828.

HERALDS. In days of chivalry, the principal employment of the herald was to carry messages of defiance, or proposals of peace, from one sovereign prince or chieftain to another; and in such high esteem was the office held, that the senior heralds were styled *kings*, and the sovereign himself vested them with the dignity by pouring a gold cup of wine on their heads, and proclaiming their style and title. In modern times the principal business of the herald is to proclaim peace and war, to superintend all royal and state ceremonies, particularly coronations, and the installation of knights of different orders: to arrange public funerals, to record and emblazon the arms of the nobility and gentry, and the like.

HERALDS' COLLEGE. The heralds of England were first incorporated by Richard III., who gave them a magnificent mansion for their college. The Earl Marshal of England is superior of the college, and has the right of appointing the members of which it consists: namely, three *kings* at arms, eight *heralds* at arms, and four *pursuivants* at arms. The *kings* are Garter, Clarencieux, and Norroy. Garter was instituted by Henry V. for the service of the order of the Garter, and is acknowledged as principal king at arms. Clarencieux and Norroy are called "provincial kings," the former having jurisdiction over that part of England south of the Trent, and the latter over the country north of that river. The distinguishing colour of the Garter is blue; of the two provincial kings, purple. The eight *heralds* are styled of York, Lancaster, Cheshire, Windsor, Richmond, Somerset, Hanover, and Gloucester, who rank according to seniority of appointment. The four *pursuivants* are Blue-mantle, Rouge-croix, Rouge-dragon, and Portcullis.

HERIOT, a relic of villein tenure, consists in a surrender of the best beast or chattel to the use of the lord on the death of the tenant.

HERITABLE, the Scotch term for *real*, in contradistinction to *movable* or chattel property. *Heritor* is the landlord or owner of the soil in Scotland.

HERITABLE JURISDICTION, a grant of criminal jurisdiction, formerly made to great families in Scotland for facilitating the administration of justice; abolished under George II., as tending to keep up divisions in that kingdom, and perpetuate the interest of the Stuart family.

HIGH COMMISSION COURT, an oppressive tribunal, intended to take cognizance of ecclesiastical offences. It was abolished by the 16 Car. 1, and an attempt to revive it during the reign of James II. hastened the expulsion of that prince.

HIGH CONSTABLE OF ENGLAND. The duties of this office were to regulate tilts and tournaments, and other feats of chivalry performed on horseback. It has been disused since the attainder of Stafford, Duke of Buckingham, under the reign of Henry VIII., and in France it was suppressed about a century later, by an edict of Louis XIII.

HIGLER, a person who carries from door to door, and sells by retail, small articles of consumption.

HOLDING OVER is keeping possession of land or tenements after the expiration of the term.

HOLIDAYS. By several statutes, no holidays are allowed to be kept at the London or other wet docks, or at the stamp office, the custom house, or at the chief or any other office of excise, except on Christmas-day and Good Friday, general fast and thanksgiving days, and the Queen's birthday. By 3 & 4 W. 4, c. 42, no holidays are allowed in the courts of common law, or in offices appertaining thereto, except Sunday, Christmas-day, and the three following days, and Monday and Tuesday in Easter week. *See* also the Bank Holidays Act, 1871, p. 202.

HOLOGRAPH, in Scotch law, a deed in the handwriting of the granter, and as such privileged and held probative without the forms requisite in other deeds.

HOMAGE. On the grant of lands under the feudal system, besides the oath of *fealty*, or declaration of fidelity to the lord, which was the origin of our oath of allegiance, the vassal or tenant, on investiture, did *homage* to his lord, openly and humbly kneeling, being ungirt, uncovered, and holding up his hands both together between those of his lord, who sat before him, and there declaring that *He did become his* MAN, *from that day forth, of life and limb, and earthly honour.*

HONOUR, a superior sort of manor or seigniory. A man may claim an honour by grant or prescription; but the crown cannot make an honour without an act of parliament. The number of honours now existing in the kingdom is eighty.

HORNING, a Scotch law term for the process which charges a debtor to pay his debt or discharge his obligation before his person or estate is seized. The process, or *diligence*, as the Scotch term [illegible] may be either real or personal; real, when the object is to attach [illegible]itage or real estate; personal, when the object is to attach [illegible]n or chattels.

HOSPITALS are eleemosynary foundations, constituted for the perpetual distribution of the free alms or bounty of the founders, for the maintenance of the poor, sick, and impotent. By 39 Eliz. c. 5, any person seised of an estate in fee simple may, by deed enrolled in Chancery, found an hospital for the relief of the poor, to continue for ever; and, by two more statutes of the same reign, the lord chancellor is empowered to issue a commission to inquire into the abuses and breaches of trust in hospital foundations.

HOTCHPOT, a mingling together; bringing in all moneys and effects into one sum or account, in order to a more equal partition. A sum advanced to a child is to be brought into *hotchpot* with an intestate's effects, so that the property advanced is debited on the division of the father's property.

HOVEL is defined, by Cowel, a place where husbandmen set their ploughs and carts out of the rain or sun.

HUNDRED, a well-known division of counties, first adopted by King Alfred, consisting of ten tithings, or a hundred families. In the northern counties hundreds are termed *wapentakes*.

HUSTINGS is a court held before the lord mayor, recorder, and sheriffs of London, and is the principal and supreme court of the city.

HYPOTHECATE. When a ship at sea springs a leak, or if otherwise in danger of being lost, for want of provisions or necessaries, the master may *pledge*, or *hypothecate*, the ship and goods, or either of them, for such necessaries as are wanting, which power is impliedly given him in constituting him master, and which he may exercise rather than the ship should be lost or the voyage defeated. The master, however, cannot hypothecate the ship or goods for any debt of his own, nor in any case but for the preservation of the ship and the completion of her voyage. Neither is the owner *personally* liable for any such contract beyond the value of the ship and cargo.

I.

ICH DIEN, the motto belonging to the arms of the Prince of Wales, signifying *I serve;* it was the motto of John, King of Bohemia, slain in the battle of Cressy, and taken up by Edward the Black Prince, to show his subjection to his father, Edward III.

ILLUMINATE signifies, in the old books, to draw the initial letter in gold and silver, and those persons who excelled therein were called *illuminators*.

IMPANEL, the writing and entering in a parchment schedule, by the sheriff, the names of the jury summoned.

IMPARLANCE, time to plead. Leave given by the court to defendant to answer the plaintiff at another time.

IMPEACHMENT, an indictment or accusation presented by the commons of the United Kingdom to the House of Lords, as the supreme court of criminal jurisdiction. A commoner cannot be

tra[illegible] marriage, renders the marriage v

IMPRESSMENT OF SEAMEN. The right sea servi[illegible] by the king's commission wa[illegible] and submitted to with reluctance, though Michael Foster that the *practice* of impre to the admiralty for that purpose is of has been uniformly continued from a very legal difficulty arises from this: no statu such power to be in the crown, though it. The 2 R. 2, c. 4, notices the arrest for the king's service; and several acts, reign of George III., show, by the speci from impressment, that the power of imp exist. And if such power does exist, it our constitution, as well as the frequent n mission, reside in the crown. In the ca Lord Mansfield said, "the power of i immemorial usages, allowed for ages." A in a similar case that the right of impr common law, and extends to all persons the seafaring line. Any exception, there may claim must depend on the provisi The freemen and livery of London are n impressed for the sea service, if in othe the service, 9 *East*, 466. Nor is a seama service, though a freeholder; nor is th merely as such, exempt, especially if his

INFANTICIDE, the practice of putting infants to death, or exposing them, has existed in many countries from the remotest period. Both in the Grecian states and among the Romans, the exposure of infants was a common usage; and it does not appear that it was punished by any legal penalty. In modern times the practice has been permitted in many countries. In China, in some parts of the empire, a considerable proportion of the female population are put to death as soon as they are born. Among the Hindoos it was practised to a great extent, until checked by the interference of Lord Wellesley; but, according to Bishop Heber's *Narrative*, it has again revived. "Pay our daughters' marriage portions and they shall live," say the Hindoos. For a female to remain unmarried is not esteemed respectable, and to get married without a portion is next to impossible. In the Polynesian Islands, and among the native tribes of Brazil, infanticide is common. In this country the public has been much indebted to Dr. William Hunter for the philosophical manner in which he examined the general value of physiological testimony in proof of the commission of child-murder. Previous to his dissertation on the "Uncertainty of the Signs of Child Murder," in the case of bastard children, it is to be greatly feared that many unfortunate women had fallen the innocent victims of false theory and practice. The floating of the lungs, which had been considered an infallible proof of a child having been born alive, he utterly discredits, and shows that so many accidental causes may produce the death of infants newly born, without criminality in the mother, that it is fair to infer that nothing but unequivocal and direct evidence of violence should be admitted as sufficient proof of guilt. It is certain that the signs of a child having lived after birth which are to be found in the heart and other parts, supply no positive inference of it unless life has continued for *at least a day*, and then the lungs alone will always suffice for a decision. It is also to be apprehended that in cases of *sudden* deaths, the testimony of chemists and medical persons to the presence of *poison*, from analysis of the contents of the stomach, or the appearances of the victim, is frequently received more confidently than it deserves to be, from the equivocal character and often the extreme difficulty of identifying with certainty the signs of criminal acts.

INFEODATION OF TITHES, the granting them to mere laymen, which was prohibited by a decree from the council of Lateran, A.D 1179.

INFORMATION, *in the Exchequer*, is a summary process instituted at the suit of the crown. It is granted without writ, merely on the intimation of the attorney-general, who "gives the court to understand and be informed of" the matter in question; upon which the accused is put to answer, and trial had as in suits between individuals. It is chiefly used to recover penalties for offences against the revenue laws, and for trespasses committed on the lands of the crown.

privileges they have conferred by calling him
sufficient reason for such interdiction. The
eight in number, and are societies subordinat
and are principally occupied by the lower
fessions; they are Clifford's Inn, Clement's
Inn, Furnival's Inn, Thavies' Inn, Staple In
A joint committee, appointed by the benche
Inns of Court, have decided by a majority
ordained clergymen shall not in future be ex

INNUENDO is a word used in declarations
ascertain the meaning of initials or doubtf
that the sense appropriated to them is the
for instance, in an action of slander, for asse
is a traitor," it must be averred under an i
ration, that the pronoun *he* means the perso
means that the said A had betrayed his alleg

INROLMENT: that is, the registering or
recognizance, or other instrument, on a roll
ing to certain prescribed forms and regulatic
and evidence, deeds are sometimes inrolle
one of the queen's courts at Westminster, or
sessions. The certificate of inrolment endo
generally deemed good evidence of the inrol
of a deed does not make it a record. A
of judicial matter, transacted in a court of
the court takes notice; but an inrolment
act of the parties concerned.

Children so born take property as if born in the lifetime of their father.

IPSO FACTO, by the deed itself. So if a person obtain two livings in the church, without being qualified by dispensation, the first living is void *ipso facto*, without any declaratory sentence, and the patron may present to it.

ISLAND or ISLE, is land inclosed in and environed by the sea or fresh water. By the law of nations, an island in the sea that has no owner belongs to him who first discovers it. But, by the law of England, if an island arise in the middle of a river, it belongs in common to those who have lands on each side; or if it be nearer to one bank than the other, it belongs to him who is proprietor of the nearest shore.

J.

JACTITATION OF MARRIAGE is where a party holds out a *false* pretension of marriage, so as to impose on another a matrimonial liability. The remedy for this injury is by proceeding in the court of divorce and matrimonial causes.

JEOFAIL is derived from the French *j'ai failli*, signifying an oversight in pleading, or other law proceeding.

JEW BAIL, or SHAM BAIL, an opprobrious term for those men of straw who used to hire themselves out as sureties for persons arrested for debt. They are alluded to in Hudibras:—

> "Or wait for customers between
> The pillars' row in Lincoln's Inn,
> Where vouchers, forgers, common bail,
> And affidavit men ne'er fail."

JEWS. For a long period the Jews were the objects of persecution; and it was only during the protectorship of Oliver Cromwell that their residence in the kingdom became legally tolerated; but the hardships they formerly suffered have been removed, and Jews as well as others participate in the protection of the laws. 8 & 9 V. c. 52, and 21 & 22 V. c. 48, which allowed Jews to make certain declarations upon taking office, were repealed by the "Promissory Oaths Act, 1868," which establishes for all a uniform oath. By 21 & 22 V. c. 49, parliament was opened to them, either house being empowered to admit them by a resolution dispensing with the phrase *upon the true faith of a Christian* in the oath of adjuration; and in 1866 Jews were enabled to sit in parliament on taking an oath similar to the one others had to take. The form of this oath (prescribed by 29 V. c. 19) has been already mentioned, p. 20. But Jews continue disqualified for the offices of regent of the kingdom, lord chancellor, or lord lieutenant of Ireland; and when to any office the right of presentation to an ecclesiastical benefice is annexed, the right devolves upon the Archbishop of Canterbury. It is a vulgar error that Jews, though born in this country, are

aliens; they are British subjects, like any other persons born in England. Sundry barbarisms, enacted under the Edwards and Henrys and Queen Anne, were abrogated by the 9 & 10 V. c. 59, and Jews, like the rest of the community, are free to hold and alienate lands and tenements, to endow schools and other charitable foundations.

JOINT-TENANTS are such as hold lands or tenements jointly by one title, and who must jointly plead, and be jointly sued. They are distinguished from tenants *in common*, by the latter holding by several titles, or by one title and several rights.

JOINTURE, a provision for the wife, to take effect in profit or possession after the death of the husband, and continue for her life at least. If a jointure be made to a woman after marriage, she may, after the husband's death, either accept it or claim her dower at common law; for she was not capable of consenting to it during coverture. A jointure is not forfeited by the adultery of the wife, as dower is, and a court of equity will decree against the husband the performance of marriage articles, though he allege and prove that his wife lives separate from him in adultery.

JOURNALS OF PARLIAMENT are the formal records of its proceedings. They are said, however, by the old lawyers to be, "not records, but remembrances." *Hob. Rep.* 109.

JOURNIES ACCOUNTS is an old term in law thus understood: if a writ abate by the death of the plaintiff or defendant, or by any defect of form, the surviving party had a new writ within as little time as he possibly could after the abatement of the first: and this was called having a writ of *Journies accounts;* the second writ being a continuance of the cause, as if the first had not abated.

JUDGE is a judicial administrator who presides in a court duly constituted, declares the law in all matters that are tried before him, and pronounces sentence or judgment according to the law. Some judges are called recorders, but the name does not alter the nature of the office. When the judges are simply spoken of, the judges of the superior courts of common law are meant, namely, of the courts of Queen's Bench, Common Pleas, and the Exchequer. There are besides judges in equity. The judges of the superior courts are appointed by the crown, and since 1688 various statutory regulations have been made to secure independence in the discharge of their duties. The 13 W. 3, c. 2, enacts that their commission shall not, as formerly, be made *during pleasure*, but during good behaviour; that their salaries shall be ascertained and fixed, but that they be removable on an address of both houses of parliament. Under the 1 G. 3, c. 23, their commissions were made permanent, notwithstanding the demise of the crown. In 1825, acts were passed to abolish the sale of offices in the courts of Queen's Bench and Common Pleas, and substitute fixed salaries and retiring pensions in lieu of this privilege.

JUDGER, in Cheshire, is a qualification to serve on a jury.

JUDICIAL WRITS, such as issue under the private seal of the

ourts, and not under the great seal of England, and are witnessed, ot in the queen's name, but in the name of the chief judge of he court whence they are issued. *Judicial* writs are distinguished rom *original* writs, as the latter issue out of Chancery, and are ·itnessed in the queen's name. But the distinction almost ceased nder the Uniformity of Process Act, 2 W. 4, c. 39.

JURATS, a sort of aldermen in many corporations.

JUSTIFYING BAIL. If a man be arrested and puts in bail, the laintiff's attorney may except against the bail, as being, in his pinion, insufficient. In such case, the bail (or other bail in their !ace) must *justify* themselves in court, or before a commissioner a the country, by swearing themselves housekeepers, and to pos-ess the other requisites required of them.

JUSTS were martial exercises with spears, on horseback, and iffered from *tournaments* in that the latter were by troops and quadrons, whereas justs were usually between two combatants only.

K.

KEELMEN are seamen and others employed in the coal trade in he north of England.

KEEP, a strong tower or defence, in the middle of a castle or ortification, of the nature of a citadel.

KEEPER OF THE GREAT SEAL, a high officer of state, created by he delivery of the queen's great seal into his custody ; and through hose hands pass all grants, charters, and commissions of the queen nder the great seal. Since 5 Eliz. c. 18, the offices of lord keeper nd lord chancellor have been incorporated.

KING'S BOOK. By the 36 H. 3, c. 3, it is enacted, that com-issioners shall be appointed in every diocese, to certify the value f every ecclesiastical benefice and preferment; and according to his valuation, the first fruits and tenths were, in future, to be ollected and paid. This *valor ecclesiasticus* is what is called the *King's Book;* a transcript of which is given in Ecton's *Thesaurus* nd Bacon's *Liber Regis*. But the whole of this document has een printed by the commissioners appointed to examine into the tate of the public records, in four volumes folio, and copies distri-uted to many public institutions.

KNAVE. It is curious to remark the successive variations of this ld Saxon word from its original, *enapa*. At first it signified a oy as distinguished from a girl ; it is thus used in Wickliff's trans-ation, Exod. i. 16, "if it be a *knave child;*" that is, a son, or ale child. Afterwards it was taken for a servant boy ; as, in the *Vision of Piers Plowman*, it is said, "*Cokes and her knaves:*" hat is, cook and her boys, or scullions. It was next applied to ny servant man ; also for an officer or dependant that bore the eapon or shield of his superior. It is now used in a degrading ense, and applied to a cunning, deceitful fellow.

KNIGHT. Some interpretations show that *knight* and *miles* have no reference at all to a horse. *Knight* or *cnight* is a boy or youth; and Mr. Turner traces the word from its primitive meaning up to its present, through the gradation of boy, servant, military attendant, sword-bearer, &c. The use of the *miles* is clearly referable to that period in the military history of the middle ages when the infantry, being a miserable ill-armed force, the wealthier and nobler classes, who fought well-armed on horseback, were the only troops taken any account of, and thought worthy of the denomination of soldiers. The right to confer knighthood was not originally a prerogative of royalty, nor the order a part of the municipal constitution of any state, but a military, and, in some sense, a religious institution pervading all Christendom; and the order might be conferred by any man who was himself a knight, whether in his own or in a foreign country. And accordingly, to this day, a foreign knight is a knight in England, by our law, though a foreign duke, &c., is only an esquire. *Knight of the shire* is a gentleman of worth, chosen by the electors, and qualified to sit in parliament for a county or a division of a county.

KYLLETH-STALLION. A custom by which lords of manors were bound to provide a stallion for the use of the tenants' mares.

L.

LABOUR, according to political economists, is the only source of wealth, and the value of every commodity depends on the quantity of labour expended in its production. Blackstone, too, considers it the most legitimate foundation of property, and says that "labour bestowed upon any subject, which before lay common to all men, and subject to the first occupancy, is universally allowed to give the fairest and most reasonable title to an exclusive property therein."

LACHES signify, in law, slackness or negligence.

LAITY is that portion of a community separate from the clergy.

LAMMAS DAY, the 1st of August, on which day the tenants that held land of the cathedral church of York were bound by their tenure to bring a live lamb into the church at high mass. It is one of the four *cross quarter* days of the year, as they are now denominated. Whitsuntide was formerly the first of these quarters, Lammas the second, Martinmas the next, and Candlemas the last; and such partition of the year was once equally common with the present divisions of Lady-day, Midsummer, Michaelmas, and Christmas. Some rents are still payable at these old cross quarter days in England, and they continue general in Scotland. The parishioners of many places exercise or claim a right of common, in various plots or fields of open pasture and arable land, from Lammas to Candlemas, in respect of the former, and to All Saints' day, in respect of the latter. By 6 & 7 W. 4, c. 115, and other

statutes for facilitating the inclosure of common fields, the right to *Lammas land* may be extinguished.

LASTAGE, paid for liberty to bring goods to markets or fairs, and paid by the last.

LAW-MERCHANT consists of certain usages, that have gradually grown into force in commercial transactions, and the validity of which has been so far allowed by the courts for the benefit of trade as to render them a part of the common or unwritten law of England. Such are laws relating to bills of exchange, mercantile contracts, and insurance, which, though claiming no higher authority than the custom of merchants, are as much the general law of the land as the laws relating to marriage or murder. It is not, however, every new practice or device among traders that becomes a part of the law-merchant; before it can become such, it must be sanctioned by long usage and judicial recognition.

LEASE AND RELEASE, a conveyance of the inheritance in land, the lease giving first the possession, and the release the right and interest. It was first practised by Serjeant Moore, soon after the Statutes of Uses, and was thus performed. A lease, or rather a bargain and sale upon some pecuniary consideration for one year, was made by the tenant of the freehold to the lessee or bargainee. Now this, without enrolment, made the vendor stand seised to the use of the bargainee, and vested in the bargainee the *use* of the land for a year; and then the statute immediately annexed the possession. Bargainee, being thus in possession, was capable of receiving a *release* of the freehold and reversion, which, by the statute, must be made to a tenant in possession; and accordingly the next day release was granted to him. A conveyance by lease and release amounted to a *feoffment*, and so supplied the place of livery of seisin. But the practice became obsolete under 4 V. c 21, by which a release only is made as effectual for the conveyance of freehold estates as a lease and release by the contracting parties, and is now quite superseded by 8 & 9 V. c. 106, which substitutes a simple deed of grant.

LECTURER. In London and other places there are lecturers, chosen and paid by the principal inhabitants, who assist the rectors in their spiritual duties, and are usually the afternoon preachers. They must subscribe to the Thirty-nine Articles, and signify their assent to the Common Prayer; and, like other ministers, be admitted and licensed by the ordinary. In some cases lectures are founded by the donations of pious persons, and the lecturer appointed by the founder, without the interposition of either rector or parishioners, though with the approbation of the bishop. But no lecturer is entitled to the *use* of the pulpit without the consent of the parson, in whom the freehold of the church is vested; they may, however, be licensed to discharge the duties of assistant curates.

LETTERS. The receiver of a private letter has, at most, but a joint property with the writer, and the possession does not give him a license to publish it, 2 *Atk.* 342. And an injunction has been granted to restrain the printing of letters, without the consent of the executors of the person who wrote them, *Amb.* 737. This rule prevailed in the case of Hansom and Hobhouse, executors of Lord Byron, *v.* Knight, 1825; although a strong presumption was shown that his lordship sent them, contemplating the probability that the person to whom they were sent would publish them.

LETTER OF ATTORNEY, a writing empowering another person, who in such cases is called the *attorney* of the party, to do any act instead of the person granting the power; as to receive a debt or dividend, transfer stock, sue a third person, sign a deed, or give possession. This instrument may be either general or special; that is, may extend to the transaction of the entire affairs of a person during his absence, or may be restricted to one or more operations. The agent has precisely the power of his principal in the matter prescribed by the letters of attorney, until revoked. If the power has been given for a security, it is not revocable by the principal. Letters of attorney are generally executed under hand and seal, that is, by deed, and when they contain an authority to bind the principal by deed, it is essential that they should be so executed.

LETTER MISSIVE, *for electing a bishop*, a letter from the queen to the dean and chapter, inclosing the *name* of the person whom she would have them elect.

LETTER OF CREDIT is where a merchant or correspondent writes a letter to another, requesting him to credit the bearer, or a third party named, with a sum of money therein specified.

LETTER OF LICENSE, an instrument in writing given by creditors to a person, allowing him a longer time for the payment of his debts, and protecting him from arrest in going about his affairs.

LETTERS PATENT, or *open letters*, are writings sealed with the great seal of England, whereby the grantee is protected in the enjoyment of some discovery, privilege, or advantage.

LEVANT ET COUCHANT applied to the cattle that have been so long on any land or tenement, that they have lain down and risen again to feed, as opposed to cattle merely passing through.

LEVARE FACIAS, a writ of execution directed to the sheriff for levying a sum of money upon the goods and chattels of a defendant.

LEX TALIONIS, the law of retaliation, which subsisted among the Jews, Egyptians, and other ancient nations.

LIBRARY. An unrepealed statute, the 7 A. c. 14, makes divers provisions for the preservation and regulation of such parish libraries as are bequeathed or established for the use of the poor clergy, whose incomes are so small they cannot afford to buy books. Incumbents are required to give security, and make catalogues of

books ; and where a book is not returned, a justice's warrant be obtained to search for and restore the same. Relative to lic libraries and museums are the 18 & 19 V. c. 95, and the t 30 V. c. 114.

IEGES, that is, dependants. *Liege people* are the queen's sub-, or the vassals of their superior.

IGHTERMEN, persons employed in the carrying of goods to and ı ships, in barges or lighters, on the river Thames.

IMITATION, of action, see p. 69.

IMITED, a term commonly affixed to the title of joint-stock com-ies intimating that the liability of subscribers does not extend nd the amount of their shares. It marks the distinction of ı associations from a common partnership, and was first re-ed by the Joint-Stock Companies Act of 1856, the 19 & 20 V. 7. See also p. 198.

INEAL ANCESTOR is a father or grandfather in a right line. It rious to remark the number of ancestors which every man has, in no very great number of degrees ; and so many different ds is a man said to have in his veins as he has lineal ancestors. s, if he have two in the first ascending degree, his own parents, as four in the second, the parents of his father and the parents is mother ; he has eight in the third, the parents of his two lfathers and two grandmothers ; and by the same rule of pro-on, he has one hundred and twenty-eight in the seventh ; a and and twenty-four in the tenth ; and at the twentieth de-or the distance of twenty generations, every man has above a ı of ancestors, as may be exemplified by continuing the geo-series to that number. *Collateral kindred*, which descend wo branches instead of one, increase at a much faster rate ; se increase in a quadruple instead of a duplicate ratio ; so the fifteenth remove, a man will have nearly 270 millions of ıl relatives, living or dead.

IT. A suit of clothes which a nobleman or gentleman gives rvants or followers. It also signifies delivery, as *livery of* a delivery of possession of lands and tenements to one that e to them.

IC ASYLUMS. These are of two kinds, either such as are d by private individuals for the reception of insane per-ich as are erected by the county, or in municipal boroughs, the care of pauper and criminal lunatics. The abuses these receptacles are liable have given rise to various ıt preventive legislation, by which they are subject to inspection, and the control of a special jurisdiction. For ıe delays and expenses attending the execution of writs *inquirendo*, and regulating proceedings in the case of of lunatics, the 16 & 17 V. c. 70, partly repeals and the acts in force from 6 G. 4, c. 53, to 15 & 16 V. a. 6, lord chancellor is empowered to appoint two

masters in lunacy, with the full power of commissioners, and before whom all references connected with lunatics are to be made, each master receiving a salary of £2,000, with retiring pension. Two medical visitors and one legal visitor to be appointed; the masters are visitors *ex officio*. Expenses to be defrayed by fees on proceedings, and by a fixed percentage on the clear annual income of lunatics, commencing at 4 per cent. on incomes between £100 and £1,000, and decreasing to 2 per cent. on incomes of £5,000 and upwards. Rate of fees and percentage may be altered by order of lord chancellor. If alleged lunatic demand a jury, the chancellor may examine as to his competency, and order a jury, s. 41. After return of inquisition, masters to inquire as to next of kin, and they are to have notice of proceedings, s. 75. Lunatics to be visited at least once a year; medical and legal visitor may visit either together or in succession, and report to the chancellor. The remaining clauses, to s. 153, chiefly relate to the administration of the estates of lunatics, and the powers of the lord chancellor. The other acts, the 16 & 17 V. caps. 96 and 97, are too copious and technical in their details, or of too limited interest, to allow of useful abridgment. By 19 & 20 V. c. 87, where a committee of justices of the county has been appointed by providing an asylum, the recorder of a borough within the county may, at the general quarter sessions after passing the act, appoint two justices to be members of the committee. By an act of 1862, provision is made for the care of a limited number of *chronic lunatics* in the workhouse of a parish union, if certified to be fit, s. 8. Persons licensed to keep house for lunatics, infringing terms of license as to number, sex, or class of patients, incur a penalty of £50. With assent in writing of two or more commissioners, or, in case of house licensed by justices, of two or more of the visitors, the proprietor may keep as a boarder for time specified, any person who may have been, within five years immediately preceding, a patient in any asylum, hospital, or licensed house, or under care as a single patient, s. 18. No person to be detained in any workhouse, being a lunatic or alleged lunatic, longer than fourteen days, unless with the sanction, in writing, of the medical officer of the parish or union, s. 20. Persons signing orders for admission, to have seen the patient within one month. Superintendent of asylum to transmit statement of condition of pauper lunatics to guardians of parish or union, s. 34. Visiting committee to enter observations in a book, respecting accommodation, &c., of lunatics in workhouses, s. 37.

Luxury. The various sumptuary laws to restrain excess in apparel are repealed by 1 James, c. 125.

M.

Magna Charta, the great charter of liberties, granted by, or

nther extorted from, King John, and afterwards, with some alterations, confirmed in parliament under his successor. It was called Magna Charta on account of its great importance, and to distinguish it from another charter, the *Carta de Foresta*, which was granted about the same time. The laws contained in Magna Charta are the earliest written declaration of the liberties of the subject as opposed to the arbitrary will of the crown.

MAIDEN ASSIZE. When no person is condemned to die at a circuit town, it is called a *maiden assize*. The term is now more frequently applied to an assize where there are no prisoners to be tried.

MAINOUR, the goods or articles stolen by a thief, and found in his possession.

MAINPRISE, the delivery of a person into friendly custody, upon security that he shall be forthcoming at the time and place assigned; it differs from *bail* in that a person bailed is not supposed to be at large, but in the ward or actual keeping of his sureties.

MALA IN SE are acts unlawful and bad in themselves; as theft, murder, perjury, and the like.

MANDAMUS, the name of a writ, issuing, in the queen's name, from the court of Queen's Bench, directed to any person, corporation, or inferior court, requiring them to do some specified act which appertains to their office and duty. It is a high prerogative writ, of a most extensive remedial nature, and issues in all cases where a party has a right to have anything done, and has no *other legal means* of compelling its performance. A mandamus lies to compel the admission or restoration of the party applying to any office or franchise of a public nature, whether spiritual or temporal; to academic degrees, to the use of a meeting-house, &c. It lies for the production, inspection, and delivery of public books and papers; for the surrender of the regalia of a corporation; to oblige bodies corporate to affix their common seal; to compel the holding of a court; and for an infinite number of other purposes. As the writ of mandamus is exclusively confined to the court of Queen's Bench, and has been called one of the *flowers* of that court, no writ of error will lie to any other jurisdiction, if there should be anything improper either in the granting of it or in the proceedings under it. We have said that a mandamus does not lie unless the party has no other *legal remedy*. Thus, it does not lie to the Governor of the Bank of England to transfer stock, because the party has his remedy by assumpsit; nor to insert certain persons in a poor's rate, though the omission is alleged to have been to prevent their having votes for members of parliament. The court will not award a mandamus for licensing a public-house; nor to compel admission to the degree of a barrister; nor to compel any of the inns of court to admit a person as student, or to assign reason for refusing to admit him. Nor for a fellow of a college, where there is a visitor; nor to the College of Physicians, to

examine a doctor of physic, who has been licensed in order to his being admitted a fellow of the college; nor to restore a minister of an endowed dissenting meeting-house; for, if he had been regularly admitted, he has his remedy by action. The 1 W. 4, c. 21, facilitates the proceedings in prohibitions and on writs of mandamus. And by 17 & 18 V. c. 125, a plaintiff in an action may in many other cases claim a mandamus commanding the defendant to perform some duty in which the plaintiff is interested.

MANIFEST, a statement of the name and tonnage of a ship, the name of the master, the amount and description of the cargo, and, in short, every particular connected with the voyage, and the parties interested therein.

MANSE, a habitation or farm. In Scotland, every minister is entitled to a competent manse, as well as a stable, barn, byre, and other offices, with a garden, excepting the minister of a royal burgh.

MANSION, the lord's chief dwelling-house within his fee; otherwise called the capital messuage or manor place.

MANUFACTURES are, strictly, such articles of utility as are produced by the *hand* only, but the term is applied to commodities produced by the joint operation of machinery and manual labour.

MARCHES, the boundaries or limits between two countries, as between England and Wales, or between England and Scotland. *Lords Marches* were those noblemen that lived on the marches of Wales or Scotland, who formerly had their peculiar laws and exercised almost regal authority; abolished by 27 H. 8, c. 26.

MARCHET, in the ancient British *Gwabr Merched*, or "maid's fee," is a composition of 10*s.* paid by the tenant to the lord, on the marriage of the tenant's daughter. The custom, with certain modifications, is observed in some parts of England and Scotland, and in the manor of Dinevor, in the county of Caermarthen.

MARINES, men embodied to serve as soldiers on board ships of war, or on shore in the event of coast battles. In the British navy they also occasionally assist in some of the operations connected with the working of the ship; they cannot, however, be sent aloft at the command of a naval officer. No commission in the marines is obtained by purchase; the officers rising by seniority, as high, however, only as the rank of colonels-commandant.

MARK, an ancient coin; the mark of silver was 13*s.* 4*d.*

MARK TO GOODS is what ascertains the property or quality thereof. If a person use the mark of another, with *intent* to injure him, and he sustains damage, an action on the case lies.

MARKET is a lesser kind of fair, held by grant or prescription. Formerly markets were chiefly held on Sundays and holidays, for the convenience of those who had assembled to hear divine service. They are prohibited on those days by 29 Car. 2, c. 7.

MARQUE AND REPRISALS, *Letters of*, are used for the commissions granted to individuals to fit out privateers in time of war to cruise

it the enemy; the owners giving security to the Admiralty not
ringe the rights of nations with whom the country is at peace.
t the outset of the late war with Russia, England publicly
nced her intention not to exercise the belligerent right of
ng privateering. It was abandoned by all the European
s at the Peace Congress of Paris in 1856; but a divergence of
ple arose between England and the United States of America,
itter wishing to extend the same neutral protection to all
e property of belligerents at sea same as on land.

RTIAL LAW is law as it is administered by courts-martial. It
not consist of a settled code, but of Articles of War, pro-
ted at the pleasure of the crown, by the provisions of the
y Act; and, according to Sir M. Hale, is something rather
ted than established. During insurrection or rebellion, when,
sequence of the ordinary process of general law becoming in-
ial for the security of life and property, in a district or pro-
the legislature has allowed that a military force shall be
yed to suppress the disorder, and secure the offenders; and
the trial of the latter takes place according to the practice of
ry courts, such district or province is said to be subject to
al law. On the occurrence of such emergency, parliament
y suspends, for a period, the Habeas Corpus Act. In merely
umults the military commander is called upon to act with his
when the civil authorities have failed in preserving peace,
he responsibility of employing soldiers on such occasions
es entirely on the magistrate resorting to their aid. The
ry officer must in this case effect by force what by other
could not be effected. Before employing the military in
umultuous disturbances, the Riot Act is mostly read.

TRICULA, a register; hence, to be entered on the register of
iversities is to be matriculated there.

UNDY THURSDAY. The practice of feeding, clothing, and
buting money to indigent persons on the part of the sovereign
is day, appears to have been first introduced into this country
e year 1563, by Edward III. The custom has continued,
ut intermission, to the present period; and yearly, on
dy Thursday, the lord almoner, or, in his absence, the
moner, attends for that purpose in Whitehall Chapel.

XIMS IN LAW. What proverbs are in common life, maxims
law, and hold nearly the same authority in legal adjudica-
as acts of parliament. They form part of the general cus-
or common law of the land, and are determined by the judges.
axims in the law-books are too numerous to be inserted; the
ing is a selection of the principal:—

r laws abrogate those preceding which are contrary to them.
who desires the benefit ought to bear the charge, 1 *Co.* 99.
king is greater than any single person, less than all, *Bract.*
c. 8.

No one is bound to criminate himself.

No one can be witness in his own cause.

A prison is for safe custody, not for punishment, *Co. Lit.* 260.

He confirms a use who destroys an abuse, *Moor*, 764.

The consent, not the junction, of the parties makes the marriage; and they cannot consent before marriageable years, 6 *Co.* 22.

A contract founded in evil, or against morality, is void, *Hob.* 167.

Conditions against law are void.

The appointment of judges is by the king; their jurisdiction by the law, 4 *Inst.* 74.

God only can make an heir, *Co. Lit.* 7.

Deceit is not purged by circuity, *Bacon.*

Clandestine gifts are always suspicious, 3 *Co.* 81.

In cases of extreme necessity everything is in common, *H. P. C.* 54.

In criminal cases the proof ought to be clear as daylight, 3 *Inst.* 210.

A judge ought always to look to equity, *Jenk. Cent.* 45.

A judge is the law speaking, 7 *Co.* 4.

Public rights are to be preferred to private, *Co. Lit.* 130.

Justice strengthens the throne, 2 *Inst.* 140.

Intent without act is not punishable.

The law speaks to all with the same mouth, 2 *Inst.* 184.

Long possession is the law of peace, *Co. Lit.* 6.

As corn comes from the ear, so a bastard comes by a mistress, *Co. Lit.* 224.

It is better to recede than proceed badly, 4 *Inst.* 176.

The naming of one thing is the exclusion of another.

He who does a thing by the agency of another does it himself.

Malice is held equivalent to age.

Right cannot die, *Jenk. Cent.* 100.

The church is to be more favoured than the parson, *Godol. Rep. Can.* 172.

To refer errors to their principles is to refute them, 3 *Inst.* 15.

Every man's deed shall be taken most strongly against himself.

Every one is presumed to contemplate the probable consequences of his own act.

He confesses his guilt who flies from judgment, 3 *Inst.* 14.

It is fraud to conceal fraud, 1 *Vern.* 240.

It is the same thing to say nothing and not to say sufficient, 2 *Inst.* 178.

Ignorance of the fact excuses; but not ignorance of the law, 1 *Co.* 177.

Ignorance is the greatest blemish in mechanics, 11 *Co.* 54.

Impunity always invites the greater crimes, 5 *Co.* 109.

Want of power excuses the law.

rything may be annulled by the same means that made it.
l grammar does not vitiate a deed, 9 *Co.* 48.
: law compels no one to do things useless or impossible.
at an *attempt* is, the law has not defined, 6 *Co.* 42.
matters not what is known to the judge, if it be not known
ally, 3 *Buls.* 115.
similе is the same, *Co. Lit.* 3.
: best interpreter of a statute is the statute itself, 8 *Co.*

is the father whom the marriage shows to be such, *Co. Lit.*

e eye-witness is better than ten ear ones, 4 *Inst.* 279.
at necessity forces, it justifies, *H. H. P. C.* 54.
reement overrules the law, 2 *Co.* 73.
multitude of ignorant persons destroys the court.
one shall fill two offices, 4 *Inst.* 100.
ences the most difficult to guard against ought to be most
ely punished.
: who cannot pay in purse must pay in person, 2 *Inst.* 173.
stly. The title of an Englishman's liberties is older than the
t title to any estate.

uitable Maxims.—The following are the maxims which are said
vern courts of equity :—
: that will have equity done to him must first do it to the other
.
: that has committed iniquity shall not have equity.
uality is equity, *Hob.* 224.
uity suffers not a wrong to be without remedy.
uity relieves against accidents.
:vents mischief.
:vents multiplicity of acts.
gards length of time.
ll not suffer a double satisfaction to be taken.
ffers not advantage to be taken of a penalty or forfeiture
: compensation can be made.
regards substance, not ceremony.
ıere equity is equal the law must prevail.
verdict at law is a bar to equity, 1 *Vern.* 176.

:DICAL JURISPRUDENCE is defined a science by which medicine
ts collateral branches are made subservient to the construc-
elucidation, and administration of the law, and to the pre-
ion of public health. It resolves itself into two great
ons—*Forensic Medicine*, comprehending the evidence and
ns necessary to be delivered in courts of justice ; and *Medi-
olice*, embracing the consideration of the policy and efficiency
: legal enactments for the purpose of preserving the general
ı of the community. It is a science of the greatest impor-

tance to the just investigation of cases of poisoning, homicide, rape, abortion, lunacy, nuisances, and insurance of lives.

MERCHANT is one who buys or trades in commodities; but the term is usually restricted to those who deal wholesale, or are engaged in foreign commerce. Before the Juries Act, 1870, all persons entered on the Special Jurors' Book as "merchants" were eligible to serve on special juries.

MERTON, *Statute of*, is the 20 H. 3, passed in the year 1236, in a convent of Augustine canons, situate at Merton, seven miles from London, whence its name.

MESNE, the law term for middle or intermediate. It is applied two ways: *first*, to any incidental issue, pending a lawsuit, upon some collateral interlocutory matter, as to summon juries, witnesses, and the like. *Second*, mesne process is used in contradistinction to *final* process, or process of execution, and signifies all such process as intervenes between the beginning and end of a suit. To arrest on mesne process is to arrest in the middle of a suit before trial and judgment, and is abolished.

MESSAGES, in a parliamentary sense, are of three kinds:—1. From the crown to either house of parliament. 2. From the Commons to the Lords. 3. From the Lords to the Commons. In the presentation of the first, a minister, being a member of the House of Commons, appears at the bar of that house, and being called upon by the speaker, brings up the royal message in writing, which is then read from the chair, and immediately taken into consideration, or a time appointed for that purpose. Messages from the crown to the House of Lords are delivered in at the table by the minister who leads in that house, or by the lord chamberlain; they are then handed to the lord chancellor, read from the woolsack, and proceeded with as in the Commons. Messages from the Lords to the other house are conveyed by the proper officer of the house, or when they relate to the sovereign, or any member of the royal family, by two of the judges. These messengers appear at the bar accompanied by the serjeant-at-arms bearing the mace; and making three obeisances, they advance to the table of the house, and deliver the communication with which they may have been charged. Messages from the lower to the upper house are conveyed by the proper officer of the House of Commons, who is conducted to the bar of the lords by the gentleman, or, in his absence, by the yeoman usher, and there delivers the message to the lord chancellor, who comes down from the woolsack to receive it. Each house usually returns answers by messengers of its own.

MESSUAGE, a dwelling-house with or without land annexed.

METROPOLITAN, or chief bishop, is so called because consecrated at first in the metropolis of his province, and is styled archbishop in respect of the bishops under him. The former is *enthroned*, the latter *installed*.

Mews, anciently the falconry, or place for keeping hawks; it is r applied, in London, to stabling for horses.

Mise, in French, a term for law expenses. *Mise money* was merly money given by way of contract or composition to purchase e liberty or franchise. An honorary gift or customary present, n the Welsh, to every new king or prince of Wales, anciently sn in cattle, corn, or wine, was denominated a *mise*.

Missal, the mass-book, containing the daily ritual of the mass.

Mitre, the episcopal crown. *Mitred abbots* were the heads of gious houses, who obtained the privilege of wearing the mitre, , gloves, and crozier, of a bishop.

Mittimus, a writ for the removal of records. It is also a pre-, in writing, under the hand and seal of a magistrate, directed he gaoler, for the receiving and safe custody of an offender till a delivered by law.

Mixed Actions partake of the twofold nature of real and per-al actions, having for their object the demand and restitution of property, and also personal damages for the wrong sustained.

Monarchy, that form of government in which sovereign power ntrusted in the hands of a single person, 1 *Bl. Com.* 48.

Money, a symbol or representative of value, by which payments made, and the subdivision and interchange of commodities ilitated. The Saxon word *monet*, the German *munzt*, the French *naie*, the Italian *moneta*, and the Spanish *moneda*, all are ved from the same Latin root of *moneo*, to advise. Metallic ey derives authority to be current from the impress and com-nd of the sovereign. See *Coin*, *Gold*, and *Silver*.

Monster is one born without the human shape: such cannot ehave or hold land; but a person may be heir to his ancestor, ugh deformed in some part of his body, *Co. Lit.* 7. A monster wn for money is a misdemeanour, *Car.* 2, *Harrin* v. *Walrond*. s was the case of a malformed child, which was embalmed to be t for show, but was ordered by the lord chancellor to be buried hin a week. What *constitutes* a monster is left by jurists vague l undetermined; there are few authenticated instances of mon-s having long survived the period of their birth; and perhaps safest criterion of monstrosity would be to exclude every pro-tion from that description which is possessed of reason and the er of prolonged existence.

Month, a period of time, and is either *lunar* or *solar*; the *lunar* nth contains four weeks or twenty-eight days; the *solar* or *ndar* month contains twenty-eight, thirty, or thirty-one days. month, by the common law, is the lunar month of twenty-eight s; and, in case of condition for rent and enrolment of deeds, month is computed at twenty-eight days: and generally, where atute speaks of months, without specifying *calendar* months; where a statute accounts by the year, half-year, or quarter, then s to be reckoned according to the calendar. In commercial

matters a month is held to mean a calendar month, 2 *Car.* 19; and by 13 & 14 V. c. 21, "month" in all acts means ca month, unless words be added showing a lunar month was int A twelvemonth, in the *singular* number, includes the whol according to the calendar; but twelve months, six months, the *plural* number, include so many months of twenty-eigh See *Calendar*.

MOOT, a term anciently applied to the fictitious arguing of by which students in law were exercised and trained for the d of clients. In the north of England, *Moothall* is a term u the building where sessions are held.

MORTUARIES, customary gifts, claimed in many parishes incumbent on the death of his parishioners.

MOSSTROOPERS, bands of freebooters, who formerly infest Borders, living by robbery and rapine.

MOTHERING SUNDAY, Midlent Sunday, on which day a formerly prevailed of visiting parents. *Cowel.*

MOTION. Application to the court in order to obtain som or order necessary to the progress of a suit, and is usually gr upon affidavit, made before a proper officer, to evince the t the facts upon which the motion is made.

MULTURE, the tolls that millers take for grinding corn.

MUNICIPAL LAW is that law which is not *local* or *tempora* the general, permanent, and uniform law of a country.

MUNIMENT HOUSE, a small room or house of great streng castles, colleges, or cathedrals, for the safe keeping of r charters, and documents.

MURAGE, a toll anciently taken of every cart and horse, repair of the city walls. *Blount.*

MUTE. Standing mute is refusing to answer, or ans foreign to the purpose, when arraigned of treason or felor amounts to a constructive confession, and is equivalent to pl guilty. See *Peine Forte et Dure.*

MYSTERY, an art, trade, or occupation.

N.

NATIONAL DEFENCES. For the construction of certain wo the defence of arsenals, dockyards, and the ports of Dover, land, Plymouth, Portsmouth. Thames, Medway, and Cor the creation of a central arsenal, the 23 & 24 V. c. 109, the sum of two millions to be raised by terminable annuities. scriptions paid in part, and not completed, forfeited. Allow £500 to Bank of England for management of each millio scribed. Fortifications, works, and central arsenal to be pr and constructed under direction of Secretary of State for W land purchased, works, &c., to be invested in him. A subs

ute, the 23 & 24 V. c. 112, makes better provision for acquiring ls for the defence of the realm. Lands to be taken for the eding works, and lands to be kept free from buildings or other ruction to be ascertained by declaration of Secretary for War, notices to be affixed on church doors and public chapels. ices to be given to owners, lessees, and occupiers of land required e taken and kept free. Amount of compensation to be paid for l taken or kept free, to be settled by agreement between etary and all parties having estate or interest therein. Amount e settled by a jury, in case of disagreement. By s. 40, power n to divert highways, or alter the level of any way, sewer, drain, ipe.

ATURALIZATION cou'd formerly only be granted by act of parlia- t, for by this an alien is put in the same situation in most re- ts as a natural-born subject. By 7 & 8 V. c. 66, aliens might aturalized by the certificate of the Secretary of State; and the uralization Act, 1870, has removed most of the disabilities nerly affecting aliens.

AVY BILLS. Bills issued from the Navy Office, to meet any gency in that branch of public expenditure; and bearing erest after a certain date if not discharged.

EAT or NET, the true weight of a commodity, without the k, bag, or dross.

EATGELD, a rent or tribute paid in cattle.

E EXEAT REGNO, a writ to restrain a person from leaving the gdom without the queen's license. Where a suit is in equity a demand which can only be enforced in the court of Chancery, n affidavit made that there is reason to apprehend the de- dant will leave the kingdom before the conclusion of the suit, lord chancellor, upon a bill filed, will, by his writ, stop him, l commit him to prison, unless he produce sufficient sureties that will abide the event of the suit.

EIF, in French NAIF, a bondwoman, or female villein.

EMINE CONTRADICENTE, words used to express the unanimous sent of either house of parliament to a vote or resolution.

EXT OF KIN. The wife of a testator is not included in the ning of the words "next of kin," for she is no relation to her band in the sense in which that phrase is used, because it as kindred by blood only, and the wife is no relation by blood affinity—*non affinis sed causa affinitatis;* but in cases of in- acy, the widow is entitled to a distributive share.

IGER LIBER, the black book, or register in the Exchequer, is ed by that name; several chartularies of abbeys, cathedrals, &c., distinguished by a similar appellation. The term *Black Book* been applied to a well-known publication, exhibiting the abuses he government in church and state, courts of law, corporations, public offices and companies, before the passing of the Reform of 1832, followed by other acts of political amendment.

NIGHT, *in law*, is the interval between sunset and when it is so dark that the countenance of a man cannot be discerned. In some acts of parliament the limits of the n hours are more definitively fixed; as in the Larceny A 24 & 25 V. c. 96, s. 1, night is deemed to commence o'clock in the evening of each day, and to conclude at six in the morning of the next day.

NIHILS, or NICHILS, are issues concerning debts, wh sheriff answers as *nothing* worth, by reason of the insuffic the parties from whom due.

NISI PRIUS, one of the five commissions to justices o whereby they are empowered to try issues of fact with th vention of a jury. Before the judges regularly went circ causes were triable at Westminster during the four great or terms of each year, and writs of *distringas* were directe sheriffs of counties commanding them to distrain, the im juries to appear at a certain day at Westminster, to try th issuing out of each county; *except before* that day the judge come to hold an assize. It is from this saving clause act the term is derived, the language of the writ to the running, "*nisi prius* justici domini regis ad assisas capien rint;" that is, *unless before* the judges come to hold assize county.

NOBLE, an ancient coin, used in the reign of Edward 6*s.* 8*d.* value.

NOLLE PROSEQUI is where a plaintiff declines proceeding in his action, and may be *before* or *after* a verdict, thou usually *before*, and is then stronger against the plaintiff nonsuit, which is only a default in appearance; but t voluntary acknowledgment that he has no cause of action.

NON EST INVENTUS, the sheriff's return to a writ, wl defendant is not to be found in his bailiwick.

NONES, NONÆ, of every month, is the 7th day of Marc July, and October, and the 5th day of all the other month

NORROY, *quasi* NORTH ROY; an abbreviation in heral northern king-at-arms.

NOTARY PUBLIC is a person who attests deeds or writ make them authentic in another country; but whose chief I is in noting and protesting bills of exchange. By 41 G. 3 no person shall act as a public notary unless duly ad penalty £50. If any notary shall act, or permit his nam used, for the profit of any person not entitled to act as a he shall be struck off the roll, on application to the c Faculties. See further, 3 & 4 W. 4, c. 70; 6 & 7 V. c. 9

NUDUM PACTUM, a bare agreement without earnest or co tion. Thus, if one buy a horse, or other thing, for money, money be paid, nor earnest given, nor day set for payment, thing delivered; here no action lies for the money or th

but the owner may sell it to another if he pleases; such *nuda pacta* being void in law, and of no effect.

O.

OATH. An appeal to God, as a witness of the truth of what is affirmed or denied, in the presence of those who are authorized to administer the same; and, in taking it, the party, as a symbol of his belief in the existence of a Supreme Being, whom he attests, is required to lay his hands on and kiss the Holy Scriptures.

OBIT, a funeral solemnity for the dead; commonly performed when the corpse lay in the church uninterred, 2 *Cro.* 51. The anniversary of a person's death is likewise called an *obit.*

OBLATIONS were anciently of several sorts; as those which the priest had for saying mass, those given by the last will and testament of the deceased, those paid at funerals, and those paid by penitent persons, called *oblationes pœnitentium.*

OBVENTIONS are offerings or tithes. *Oblations, obventions,* and *offerings,* are generally the same thing. *Blount.*

OFFERTORY is a service in the church, which is read at morning service after the sermon, during the time the churchwardens or other appointed persons are collecting the alms or offerings of the congregration. Sometimes the money collected is itself called the offertory.

OLD JEWRY, the place or street in London where the Jews formerly lived. *Cowel.*

OLERON LAWS are the laws of Richard I. relating to maritime affairs; so called because made in the island of Oleron, in the bay of Aquitain.

OLYMPIAD, an account of time among the Greeks, consisting of four complete years, having its name from the Olympic games, which were kept in honour of Jupiter every fourth year near the city of Olympia. The first Olympiad began 770 years before the birth of Jesus Christ.

ONUS PROBANDI, that is, the burthen of proving.

ORDEAL, like the corsned, a mode of purgation or trial existing in the dark ages, and of which there were two kinds, one by *fire,* the other by *water,* the former being confined to persons of rank, the latter to the common people. *Fire ordeal* was performed either by taking up a piece of red-hot iron, or by walking barefoot and blinded over nine red-hot ploughshares, laid at unequal distances; and if the accused escaped unhurt he was adjudged innocent. *Water ordeal* was performed either by plunging the bare arm into boiling water, or by throwing the suspected, tied hand and foot into a river, and *if he* escaped scalding in the first case, or *drowning in the second, he* was acquitted of crime.

ORDER. A term applied to those summary awards which ju tices of peace, by various statutes, are empowered to make in great variety of cases that come before them; such as in sudde and urgent distress to parish officers for the relief of paupers, to pawnbrokers refusing to deliver up pledges. It is less form and precise than a *conviction*: if an order be substantially right is sufficient; but, in a conviction, certainty to a greater degr of technical precision is requisite. *Order* is also applied to a rule or regulation issued by the judges regulating judicial pr cedure; or to a draft or cheque on a banker, for the payme of money to bearer on demand.

ORDINARY, a term in civil law for any judge or bishop who h authority to take cognizance of causes in his own right, and not deputation.

ORDINARY OF NEWGATE is the chaplain attendant in *ordina* upon condemned malefactors in that prison, to prepare them death.

ORIGINAL WRIT was an instrument formerly issued out of t court of Chancery, sealed with the great seal, and was the proce used for the commencement of personal actions; but it has becon obsolete under the modern amendments of the law and practice the courts.

OSCULUM PACIS, the kiss of peace; it took place in the churche after the priest had said *Pax Domini vobiscum*, when the peop kissed each other. *Cowel.*

OUTLAWRY is a punishment inflicted for contempt, and former subjected the party to forfeiture and disabilities.

OVERT ACT, an open act, capable of legal proof.

OYER AND TERMINER, from the French *ouir* and *terminer*, hear and determine. It is the first and largest of the five commi sions by which the judges of assize sit in their several circuits, a empowers them to hear and determine treasons, felonies, and tr passes. In case of any sudden insurrection, riot, or general ou rage, which requires prompt investigation and punishment, a *spec* commission of oyer and terminer to try particular persons a offences is granted.

O YES, from the French *oyez*, "hear ye," is the old proclamati to enjoin silence and attention in the court.

P.

PAINS AND PENALTIES, *Bill of*, is an act of parliament to attai any one of treason or felony, or to inflict pains and penalt beyond or contrary to the law then in force. Thus the 9 G. c. 16, inflicted pains and penalties on the Bishop of Rochest Kelly, and others, for being concerned in Layer's conspiracy, a

they were condemned by parliament without such evidence as is required by the common law courts. Bills of pains and penalties are seldom resorted to; they are an *ex post facto* law, made for a temporary emergency, and properly considered inconsistent with the regular principles of justice. The last attempt to pass a bill of this kind was that of 1820, instituted against Queen Caroline, the consort of George IV.

PALLIO COÖPERIRE is an ancient custom, mentioned by Cowel, when children were born out of wedlock, and their parents afterwards intermarried, that those children, together with the father and mother, stood under a cloth extended while the marriage was solemnizing, which was in the nature of adoption. By this custom, the children were taken to be legitimate; but such children were never legitimate in this country at common law, though the clergy sought a law made to render them legitimate.

PANDECTS, the books of the civil law, compiled by Justinian in the sixth century, and wisely made to supersede and annul the old laws and text books previously in use in the Roman empire.

PANEL, a slip of paper, or parchment, containing the names of such jurors as the sheriff or other ministerial officer returns to serve on trials of issue in courts of law. The enrolment of the names upon the schedule is called *impanelling* a jury; the returning officer is also said to *array* the names on the panel. In Scotch criminal law, the accused, who is called a defender till his appearance to answer the charge, is afterwards styled the *panel*.

PAPER DAYS are certain days in each term, so called because the court hears on those days the demurrers, or issues at law, which have been entered in the paper book for argument before they enter upon motions.

PARAPHERNALIA are the goods which a wife claims above her dower or jointure, after her husband's death, as furniture for her chamber, wearing apparel, and jewels, which are not to be put into the inventory of her husband.

PARENT is either father or mother, but generally applied to the former.

PARISHIONER is an inhabitant of, or belonging to, any parish, lawfully settled therein; and those who rent lands and tenements within a parish, though not *actually inhabitant* or resident therein, are, for the purpose of all parochial charges and burthens, considered to be parishioners. Parishioners paying scot and lot are, of common right, entitled to be admitted into a general vestry, and to give their vote, *Raym.* 1388. So, also, *outdwellers*, occupying land in the parish, have a right to vote in the vestry as well as the inhabitants, 4 *Burn's Eccl. Law*, 7. But by 59 G. 3, c. 85, s. 3, no person who on demand has refused or neglected to pay his poor rates, is eligible to vote in any vestry.

PARISH REGISTER, a *book* wherein baptisms, marriages, and burials are registered in each parish, every year. It was instituted

in the 13 H. 8; it must be subscribed by the minister and churchwardens, and the names of the persons registered be transmitted yearly to the bishop; but registration is now regulated by 6 & 7 W. 4, c. 86. It has been decided, *Burn's Eccl. Law*, 6th edit. v. 3, p. 293, that parish registers are open to all persons for inspection, and making extracts, on proper cause being assigned, and that this inspection may be demanded, but that the rector or curate cannot be obliged to make copies of these books or a certificate. The 21 V. c. 25, extends 3 & 4 V. c. 92, by which non-parochial registers of Dissenters are admitted as evidence of births, burials, and marriages in courts of justice.

PARLIAMENT. The general constitution of this branch of imperial legislation has been explained, and we shall here only notice the parliaments which acquired peculiar designations. 1. *Parliamentum insanum*, assembled at Oxford 41 H. 3, so styled from the madness of its proceedings, and because the lords attended with armed men, and contention grew high between king, lords, and commons, whereby many extraordinary things were done. 2. *Parliamentum indoctum*, or the unlearned parliament, a parliament of 6 H. 4, to which, by special precept of the sheriffs in their several counties, no lawyer or other person skilled in the law was to come, therefore it was so termed, 1 *Bl. Com.* 176. 3. *Parliamentum diabolicum*, held at Coventry 38 H. 6, by which Edward, Earl of March (afterwards king), and many of the chief nobility were attainted, but the acts passed were annulled by the succeeding parliament. There have also been the *Long* Parliament, which sat during the Commonwealth; the *Convention* Parliament, that established on the throne the Prince of Orange; and the *Confiding* Parliament, so called from its implicit devotion to the will of the king's ministers.

PAROL, word of mouth. *Parol contracts* are all contracts not under seal.

PARTY WALL. A wall separating two buildings, as a protection against the communication of a fire from one to the other.

PASSAGE, money paid for the transit of persons or goods, or for the landing of them on shore, or river-banks.

PASSPORT, a printed permission, signed by a consul or minister of state which allows a person to go abroad. When such passport has been obtained, it must be signed by the minister or agent of the state to which the traveller intends to proceed; but this is not required by many states in time of peace. Such a document states the name of the bearer, and serves as a voucher of his character and nation, and entitles him to the protection of the authorities of the country through which he may travel. In time of war passports may afford some security to states and to individuals, but in periods of tranquillity they are often a vexatious obstruction to travellers. The long peace has tended to their desuetude, and in the British Islands and the United States of America no passport

is required, and a like usage (except during war) is obtaining favour in some of the continental states.

PAYMENT OF MONEY INTO COURT to the proper officer, with the costs incurred, is an admission of the *right* of action. This may be done upon motion for leave to pay the money into court. If, after the money is paid in, the plaintiff proceed in his suit, it is at his own peril: for, if he do not prove *more* due than is so paid into court, he may be nonsuited, and pay the defendant costs; but he may still have the money so paid in, for that the defendant has acknowledged to be his due. So if the defendant plead a set-off, he must pay the remaining balance into court.

PECULIAR, a parish or church exempt from the jurisdiction of the bishop or ordinary.

PEINE FORTE ET DURE, the "strong and hard pain," is the punishment anciently inflicted on those who stood mute, or refused to plead when put upon trial. In this case the prisoner was conducted to a low dark chamber, laid on his back, naked, on the bare floor; as great a weight of iron as he could bear was next placed upon him, and in this situation he was fed with bread and water, till he died, or submitted to answer. It appears by a record of 31 Edward 3, that the prisoner might then possibly subsist forty days under this lingering punishment. By standing mute, and suffering accordingly, the judgment, and of course forfeiture of lands, was, by the ancient law, avoided. But by 7 & 8 G. 4, c. 28, if any person arraigned of any crime stand mute, or will not answer directly to the charge against him, the court may order a plea of "Not Guilty" to be entered, when the trial may proceed as if the accused had actually pleaded. Mr. Christian relates the story of a father, who, in a fit of jealousy, killed his wife and all his children who were at home, by throwing them from the battlements of his castle, and proceeding towards a farm-house at some distance, with intent to destroy his only remaining child, an infant there at nurse, was intercepted by a storm of thunder and lightning. This awakened in his breast the compunctions of conscience; he desisted from his purpose, surrendered himself to justice, and in order to secure his estate to his child, had the resolution to die under the *peine forte et dure*.

PENAL SERVITUDE, the criminal punishment now substituted for transportation.

PENAL STATUTES, statutes imposing penalties on the commission of certain offences; and actions brought for the recovery of such penalties are called *penal* or *popular actions*.

PENANCE. An ecclesiastical punishment, in which the penitent made satisfaction to the church for the scandal he had given by his evil example. In the case of incontinence or incest, the sinner was usually enjoined to do public penance in the parish church or market-place, bareheaded and bare-legged, in a white sheet, and to make *an open confession of his* crime, in a prescribed form of

words. In smaller matters, satisfaction was to be made before the minister and churchwardens or some of the parishioners, respect being had to the nature of the offence. *Penance* in this country has long been obsolete.

PENITENTIARY HOUSES were instituted by 19 G. 3, c. 7, and intended for the moral reform, as well as punishment, of delinquents. In forming the plan of penitentiaries, the principal objects have been—by sobriety, cleanliness, and medical assistance; by a regular series of labour; by solitary confinement during the intervals of work; and by religious instruction, to preserve and amend the health of the offenders, to inure them to habits of industry, to guard them from pernicious company, to accustom them to reflection, and to teach them the principles and practice of moral and social duty. Penitentiaries are, however, now subject to the general regulations of the Prisons Act, 1865.

PERAMBULATION OF PARISHES is a going over and survey of the boundaries of parishes by the minister, churchwardens, and parishioners, once a year, in or about Ascension Week. In this perambulation the parishioners may justify going over any man's land, according to usage, and, it is said, may abate all nuisances in their progress.

PERMIT, a license granted to remove spirits liable to the excise duties; and any person making paper in imitation of excise paper, or counterfeiting permits, or uttering the same, is guilty of felony.

PERSONAL ACTIONS are those whereby a man claims something due to himself, personally, or where he claims satisfaction in damages for some injury to his person or property.

PETER-PENCE, an obsolete claim of the Church of Rome of a penny from each house.

PETITION OF RIGHT, a parliamentary declaration of the liberties of the people, presented to Charles I., in 1626. Until the rights set forth in this instrument were assented to, the Commons refused to vote the supplies. At first the king sent an evasive answer to the petition, which not being accepted, he pronounced the formal words of unqualified assent, "Let right be done as it is desired." 1 Car. c. 1.

PETIT SERJEANTY. A mode of tenure which is defined by Littleton to consist in holding lands of the king by the service of rendering to him annually some small implement of war, as a bow, a sword, a lance, an arrow, or the like. The tenure by which the grants to the Duke of Marlborough and the Duke of Wellington, for their military services, are held, is of this kind, each rendering a small flag or ensign annually, which is deposited in Windsor Castle.

PETROLEUM. For the safe deposit of this dangerous combustible the 25 & 26 V. c. 66, enacts that not more than forty gallons shall be kept within fifty yards of a dwelling-house or of a building in

which goods are stored, except in pursuance of a license given by local authority. Petroleum kept in contravention subjects the occupier to a penalty not exceeding £20 a day. The local authorities empowered to grant licenses are—the Lord Mayor and Aldermen of London for that city; the Metropolitan Board of Works for the metropolitan district: the Mayor, Aldermen, and Burgesses in Council in all boroughs of England and Ireland. Search for petroleum may be made in the same way as provided for the search of gunpowder. By 29 & 30 V. c. 69, the act is made to extend to nitro-glycerine or glonoine oil as specially dangerous. By s. 3, no such goods are to be delivered to any warehouse-owner or carrier, or for conveyance by railway, unless marked or described as to their dangerous character on the outside of the package under a liability to a penalty not exceeding £500, or to imprisonment with hard labour for not above two years. Warehouse-owner or carrier not bound to receive such dangerous articles. By an order in Council other dangerous goods may be made subject to the act. *See* also 32 & 33 V. c. 113.

PIGEON HOUSE. Formerly none but the lord of the manor, or the parson, might erect a pigeon house; and now it seems that this privilege can only be *lawfully* exercised by a freeholder, who may build a pigeon house on his own ground. 5 *Rep.* 194.

PILLORY, a mode of punishment formerly common in England and most European countries, and intended to disgrace the offender by the public exposure of his body. The English pillory consisted of a wooden frame raised several feet from the ground, behind which the culprit stood, supported upon a platform, his head and arms being thrust through holes in the screen, so as to be exposed in front of it; and in this position he remained a definite time, sometimes fixed by the law, but usually assigned at the discretion of the judge who passed sentence. A more enlightened public sentiment has generally led to the abandonment of this unequal and revolting punishment; it was abolished in England in 1839, and the example has been followed in other countries.

PIN MONEY, a provision made for the wife during the husband's lifetime. It is always the first charge on the estate, so that the husband takes subject to it. If, however, a wife permit her husband to receive pin money, or, which is the same thing, do not claim it, and he maintains her, she cannot, after his death, compel payment of more than one year's arrears out of his estate. (*Lord St. Leonards' Handy Book of Property Law.*)

PIT, in Scotland, was formerly a hole in which women thieves used to be drowned; and to be condemned to the *pit* was equivalent to our phrase of being condemned to the gallows. *Skene.*

PIX, a strong and antique box, containing specimens of the coins intended for examination by a *jury of the pix*, composed of six or more eminent goldsmiths, *who* are specially impanelled to make an assay, *according to ancient usage*, of the gold and silver moneys

manufactured in the mint within a specified period, and determine whether their actual weight and value correspond with the legal standard, for which the chief officers of the mint are responsible. The jury is sworn in before a council appointed by the queen, consisting of the lord chancellor, president of the Board of Trade, wardens of the Goldsmiths' Company, and others. The court was formerly held at distant intervals, optional with the crown; it is now held annually. *See* the Coinage Act, 1870, p. 630.

PLACARD, in French, *placuart*, signifies a bill or paper posted up, a proclamation, and these are the usual applications of the term in England. In Holland it is an edict or proclamation, also a writing or passport. In 33 H. 8, c. 6, *placard* is used for a license to shoot with a gun or practise certain games.

PLAINT, the first process in an inferior court; or, in a superior court, is a matter of complaint against the defendant, and for which the plaintiff obtains the queen's writ. In the county courts it describes the parties, the sum claimed, and the cause or motive of the action.

PLOUGH-BOTE, a right of tenants to take wood to repair ploughs, harrows, and other instruments of husbandry.

PLOUGH-LAND is as much land as can be reasonably cultivated in one year with one plough, and is the same as a hide of land.

PLOUGH-MONDAY is the first Monday after the Epiphany, and received the appellation from its having been fixed upon by our forefathers of the period when they returned to the duties of agriculture, after the festivities of Christmas.

POCKET SHERIFFS. When the queen appoints a person sheriff, who is not one of the three nominated by the judges in the Exchequer, as she may do in the exercise of her prerogative, the person appointed is called a *pocket sheriff*.

POLICE is the ministerial branch of administrative justice, and extends to the prevention of crimes, as the judicial applies to their punishment and legal adjudication. It is also occupied in watching over public order and economy, by preventing breaches of the peace, by the removal of nuisances and obstructions, and taking cognizance of the observance of those local and general laws made for the health, comfort, and convenience of the community. For the regulations of the London Police, see *ante*, p. 145.

PONE, a writ whereby a cause depending in the county, or other inferior court, was removed into the Common Pleas, and sometimes into the Queen's Bench, as when a replevin was sued; then, if the plaintiff or defendant would remove that plea out of the county court into the Common Pleas, or Queen's Bench, it was done by *pone*. The writ is now seldom used.

PONTAGE, an ancient toll for passing a bridge with merchandise.

PORT REEVE, or PORTGREAVE a chief magistrate in some seaport towns, with authority similar to that of mayor. *Camden*.

POSSE COMITATUS, the whole power or people of the county,

ıich the sheriff may summon to his aid for the maintenance of e public peace, and the pursuit and seizure of felons.

Postea is the return of a judge before whom a cause has en tried, of what was done in the cause after joining issue and ırding the trial, and is endorsed on the back of the nisi prius ɔord.

Post Fine is a duty to the queen (now abolished) for a fine ac-ıowledged in her court, paid by the cognizee after the fine is fully ased; and it was so much, and half so much, as was paid for e *præfine;* or the fine which, on suing out the writ of covenant levying fines, was paid for before the fine was passed.

Post Obit Bond, is a bond in which the main condition is, that only becomes payable after the death of some person whose name therein specified. *Wishaw.*

Posting, travelling along the public road with hired horses, with without hired carriages, and which in most European countries, cept Britain, is a monopoly in the hands of government. Post-ɛ, however, has been almost superseded by stage-coaches and ilways.

Pot-Waller, a person who provides his own diet, which, in ne boroughs, gave the right of voting for members of parlia-ıɛnt.

Pound signifies an inclosure, where a distress is placed for safe stody, and may be either *overt* or *covert*. If a live distress of imals be impounded in a common pound *overt*, the owner, and t the distrainer, is bound to provide the beast with food and ecessaries; but if they be put in a pound *covert*, as a stable or e like, the distrainer must feed and sustain them. A distress of usehold goods or other dead chattels, which are liable to be ılen, or damaged by the weather, must be placed in a pound vert, else the distrainer must answer for the consequences.

Power, a term for the authority which one gives to another, sting in him the disposition of property as to leases, portions, ıature, or sale or exchange, or the like. A power may either be ven or reserved, and the person possessing it is called the donee. tates created by it, and estates created by conveyances, are, after eir creation, the same. The doctrine of powers comprehends the ıst technical and abstruse part of the law of property.

Poynings' Law, or the statute of Drogheda, passed in 1495, has d a marked influence on the subsequent legislative and constitu-ıal history of Ireland. By this law it was enacted that all the ts then or lately passed in England concerning its common weal ould be law in Ireland. It was further provided that no parlia-ıɛnt should be held in Ireland, until the lord-lieutenant had rtified the English crown of the causes for holding it, and license r the same had been obtained from the king. This badge of de-ndence on England has been thought to have operated beneficially

by preventing the passing of many exterminating acts, which in times of anarchy the Irish ministry and their partisans in parliament would have readily resorted to. Poynings' Law was repealed in 1783, and the Irish parliament emancipated.

PRÆMIUM PUDICITIÆ, a consideration given to a previously virtuous woman by the person who has seduced her; and equity will enforce the payment of a bond given to a woman whom the obligor has seduced, 2 *Peere Wms.* 432. So, where provision has been made for a female by an ineffectual conveyance, equity will interpose in her behalf, both against the grantor himself and his representative. But the courts distinguish between those obligations for consideration *passed*, and consideration *in future;* for, though a bond for *passed* cohabitation is good, one to live in a *future* state of concubinage is void. A regard is also had to the previous character of a female. If a man has given a bond to his mistress, a common prostitute, and afterwards file a bill to be relieved against the same, it appears, from the case of *Whaley* v. *Norton*, that if the bill charge such to have been her course of life, equity will relieve against it. So, where a woman of good character went to live with the defendant, as a companion to his sister, knowing him to be *married*, and he having seduced her, and separated from his wife on the occasion, gave her a bond, as *præmium pudicitiæ*, on a bill filed to enforce the payment thereof, the same was dismissed, as arising *ex turpi causâ*, 2 *Ves.* 160. But this doctrine seems to have been infringed in *Nye* v. *Moseley*, in which it was determined that an action at law may be maintained upon a bond given by a married man to a woman with whom he had cohabited for six years, and who knew that he was married, but who, until that time, had conducted herself with propriety, 6 *B.* & *C.* 113, *M. T.* 1826.

PRÆMUNIRE, *the penalties of*, are applied to a number of old offences tending to promote the papal power in diminution of that of the crown, and subject the offender to forfeiture and confinement during the queen's pleasure. Many statutes subjecting to præmunire are repealed, and prosecutions upon it are unheard of in our courts. There is only one instance of such a prosecution in the State Trials, in which case the punishment of præmunire was inflicted upon some persons for refusing to take the oath of allegiance in the reign of Charles II.

PREBEND, land or pecuniary endowment to a cathedral or conventual church *in præbendum;* that is, for the maintenance of a secular priest or regular canon, who is a *prebendary*, as supported by a prebend, *Dyer*, 221.

PRE-EMPTION, or purveyance, the right of first buying; formerly the king's purveyor exercised the privilege of first *buying*, or rather of levying on his own terms provisions, cattle, and carriages, for the royal use. Abolished by 12 Car. 2, c. 24.

PREROGATIVES apply to those privileges or rights of the crown which the queen exercises in virtue of the regal office.

PRESCRIPTION is the legal right or title to anything which is acquired by time or immemorial usage. For a prescriptive title to be valid it must have existed beyond the memory of man—that is, from the reign of King Richard I.—except in cases within the Prescriptive Act, 2 & 3 W. 4, c. 71, under which 20 or 40 years may be sufficient.

PRESENTMENT is properly the notice taken by a grand jury of any offence from their own knowledge, without any bill of indictment laid before them; as the presentment of a nuisance, or a libel, upon which the officer of the court must afterwards frame an indictment, when the party presented can be put upon his trial.

PRESERVES for the encouragement of game have no privileges beyond those of other private grounds, the occupiers of which may generally prohibit persons from sporting therein, unless privileged by right of chase or free-warren. If any person enter on another's ground he is a trespasser, and if he enter by force he may be opposed by force.

PRESIDENT OF THE COUNCIL is the fourth great officer of state, and as ancient as the reign of King John; his office is to attend on the Queen, to propose business at the council table, and report to her Majesty the transactions there.

PREST, is used for a duty in money to be paid by the sheriff into the Exchequer, or remaining in his hands. *Prest-money*, from the French *prest*, promptly, implying that those who have received it shall be forthcoming when wanted.

PRICE CURRENT, a list showing the market price of commodities.

PRIMAGE, a duty at the water-side paid to the master and mariners of a ship; to the master for the use of his cables and ropes, to discharge the goods of the merchant, and to the mariners for loading or unloading in any port or haven; it is usually about 12*d.* per ton, or 6*d.* per pack or bale, according to custom.

PRIMATE OF ALL ENGLAND. The Archbishop of York is styled in formal documents Primate of England, and the Archbishop of Canterbury Primate of *all* England. The distinction arose from a fierce dispute in respect of precedence, which occurred at a synod held at Westminster in the reign of Henry II., when the Pope's legate was present. From high words blows are said to have ensued between the rival metropolitans. Next day the Archbishop of York appealed to the Pope, and the dispute was settled by the respective titles mentioned being given to him and his brother metropolitan, the precedence being given to the See of Canterbury.

PRIMOGENITURE, the title to the succession or inheritance of a landed estate or dignity, in right of being the eldest male. If a man die seised of real estate of which he had the absolute ownership, without having made any disposition of it by his last will, the whole descends to the heir-at-law or customary heir; and the

heir-at-law is such in virtue of being the eldest male person of those who are of the same degree in kindred to the person dying intestate. If land is entailed on a man and his eldest male issue, the eldest son takes the land by two titles, first as being a male, and next as being the eldest son. The right of primogeniture does not apply to personal property, nor when the interest in land is a chattel interest for a term of years, whatever may be its duration; nor does it apply when real estate descends to daughters as coparceners. See INTESTACY, *ante*, and *Executory Devise* and *Entail*, in the DICTIONARY.

PRISAGE, or butlerage, as anciently paid to the king's butler, was a duty of so much per ton levied, first in kind and then in money, on the importation of wine.

PRIVATEER, a ship of war fitted out at the expense of a private individual, with the permission of a belligerent state, to cruise against its enemy.

PRIVILEGE, a preference or precedency, or exemption from the general rules of law. It is of two kinds; *real*, attaching to any place, or *personal*, attaching to persons—as ambassadors, members of parliament, clergymen, and lawyers. Formerly religious houses and certain localities conferred the privilege of freedom from arrest, even in criminal matters, upon those who entered them: and in recent times many places existed which privileged those within them from arrest in civil suits. The latest existing and most notorious of these were the Savoy, the Mint, and Whitefriars. But by 8 & 9 W. 3, c. 89, the privileges of all these places were abolished. At present no arrest can be made in the royal presence, nor within the verge of the palace of Westminster; nor at any place where the sovereign resides, or the judges are judicially sitting. Personal exemption from arrest is guaranteed to all suitors, counsel, or other persons attending any court of record upon business; or to an arbitrator under a rule of *nisi prius*.

PRIZE IN WAR, the property taken from an enemy, the law of which is partly regulated by the law of nations. Questions of naval prize-money in England are adjudicated by the courts of Admiralty. Army prize is regulated by 2 & 3 W. 4, c. 53, which enacts that all captures shall be disposed of as the crown shall direct. Deserters entitled to prize-money not to receive the same: but such shares, and those unclaimed within six years after being paid to the treasurer of Chelsea Hospital, to be forfeited, unless upon good cause shown and allowed by the commissioners of the hospital. Appraisements and sales to be made by agents appointed by the commanders and the other commissioned officers. Penalty on any other person sharing, and on agents permitting others to share in the commission or emolument in respect of agency, £100; and double the amount of agency allowed to be taken. A certified list of the persons entitled to share in captures to be transmitted to Chelsea Hospital by the commanding officer. Penalty

ies, £500. Agents to collect and convert into money prize and capture, and within one month remit the with account of sales. Agents or other persons g the payment to Chelsea Hospital shall pay interest f £1 per cent. per month, to be shared amongst the forfeit to Chelsea Hospital £500. Agency percent- d 1½ per cent., exclusive of brokerage and all other reasurer, at the end of three months from receipt to give notification in the *London Gazette*, and in ning newspapers, of distribution at the end of one notify the amount of a share of an individual in to continue to publish such notifications twice a of prize-money due to non-commissioned officers or aid, upon their personal application, or to wife or mother, brother or sister, or to the regimental agent , or to any other regimental agent, as directed in a ee to be taken on paying any share, under penalty ns employed by the hospital, acting as prize-agents,

In all joint expeditions by army and navy, immejudication by any Admiralty court, the share of the l over to the hospital. Personations or forgeries btain prize, punishable by transportation for life, or ven years.

this act is repealed by 27 & 28 V. c. 36, and the f Chelsea Hospital may in any case, if they think eir treasurer to pay the share of prize money, not belonging to any deceased officer, soldier, or other person showing himself, to the satisfaction of the to be entitled thereto or to shares thereof, without will or letters of administration to the estate of erson being obtained or taken out.

ie exhibiting and proving of a will or codicil before ority.

legal steps, by writs or otherwise, by which the de- e to answer; and, if found liable, to satisfy the im upon the plaintiff. *Practice* is the means by ss is rendered available; settles the mode of bring- owledge of the defendant, the steps he must take elf, the course of proceeding, and the regulations ll these steps to be taken in a fixed time.

NY is the next friend suing for an infant.

NS are either royal or municipal; the latter are ord Mayor of London, and the heads of some other ns, but always founded upon charter or custom. ue a royal proclamation forms one of the prerogawn, and is exercised to give currency to the coin of force abstinence from vice and immorality, to direct of a fast or thanksgiving day; or publicly to an-

attorney in the courts of common law.

PROHIBITION, a writ to prohibit an infer to suit, from further procedure in a cause of the three superior courts of common l differs from an injunction in equity, becau to the parties, and does not interfere wit tion writ is grantable in cases where a co without its jurisdiction, or where, though jurisdiction, it attempts to act by rule England.

PRO RATA is used when parties are call that is, in proportion to their respective i

PROTHONOTARY, a chief officer or clerk, to the present masters in the queen's cour

PROTOCOL, the first copy; the entry of a of a notary or other public officer, so that copy may be admitted as evidence. It is a statement of diplomatic proceedings.

PROVINCIAL CONSTITUTIONS were decree synods held under divers archbishops of C Langton, in Henry III., to Henry Chiche last were adopted by the province of Yor

PROVOST denotes the chief or head, an in French, and *præposius* in Latin. In S chief municipal officer, as the mayor is in of England. It is also applied to the h King's College, Cambridge. In the En

em to the commissioners with the consent of the Trea-

ignifies younger, junior, or last created. So the several barons, not chiefs, are called *puisne* judges or *puisne*

ER VIE is where lands are held for the life of another.
, derived from the French *pur*, clear, exempt, and *lieu*, iat is, a place clear from the forest, and signifies those ich were added to ancient forests over other men's lands, isafforested by the *Charta de Foresta*.
ANCE, an ancient but obsolete prerogative of the kings of purchasing or taking provisions from their lieges, and horses and carriages without leave of the owners. The ise property was thus seized were entitled to recompense, ly Hobson's choice, to take what was offered or nothing. is employed in these compulsory levies were called or "jackals of the royal table," as termed by Mr.

is the body or enacting part of a statute, beginning it enacted," &c., and contradistinguished from the which is the commencing part, setting forth the objects f parliament.
s, the reputed or commonly esteemed, in opposition to us or unquestionable.

Q.

ESIMA, applied to the first Sunday in Lent, and about before Easter; so called from the forty days' fast of t.
s are admissible to serve on juries, to public and muni- yments, to the office of sheriff or the degree of a bar- s be members of parliament; and are enabled, as well ns and Separatists, to make affirmation or declaration in oath, in all cases where oaths are requisite.
T SE BENE GESSERIT, a clause often inserted in the grant ignifying that the party shall hold the same so long as s himself properly.
T MERUIT, so much as he has deserved.
T VALEBAT, so much as it is worth.
INE, the forty days which a widow of a deceased land- claim to remain in the chief house till her dower be er. Also the sanitary precaution adopted in respect of iving from foreign places suffering from infectious

to annul or render void. The court of Queen's Bench an indictment for informality, or an order of sessions or quest for irregularity.

QUID PRO QUO, giving one thing for another, being the mutual consideration of contracts.

QUI TAM is where an information is exhibited, or action prosecuted on a penal statute, for the sake of the penalty. Generally no action or proceeding for the recovery of a penalty or forfeiture under the Stamp Laws, can be instituted against any person, unless the same be commenced and prosecuted in the name of the attorney-general in England, or lord advocate in Scotland, or in the name of the solicitor or other officer of the stamp duties. There are exceptions to this, under particular statutes. Proceedings for the recovery of penalties, under the laws relating to the customs and excise, are instituted and conducted by the proper officers, under the direction and control of the commissioners, who supply their own forms of information, summonses, convictions, and warrants, for which they are of course responsible, and will not permit an information to be laid, or a conviction to be drawn out, except in their own forms. In a *qui tam* action, part of the penalty usually goes to the crown and part to the informer. In 1813, a multiplicity of actions having been brought against the clergy for non-residence, parliament interfered to stop them by passing a Bill of Indemnity. A similar anomalous interference occurred in 1844, when the Legislature interfered to stop certain *qui tam* actions against gamblers; and the like in 1870, when certain actions against newspapers for advertising for the return of stolen goods were stopped in the same manner.

QUIT RENT is a small rent payable by the tenants of manors in token of subjection, and by which the tenant goes quiet and free. In ancient records it is called *white rent*, because paid in silver money, to distinguish it from corn rent, &c.

QUOAD HOC, a term used in law-pleading, signifying *as to this*.

QUORUM. Justices or commissioners of the *quorum* are those whose presence is necessary in order that the rest may proceed. They are usually of greater experience or estate than the others. But now it is usual to repeat all the names in the *quorum* clause, and the term signifies only the number necessary to be present.

QUO WARRANTO, an ancient writ directed against a person or corporation who usurp any office, franchise, or liberty, to inquire by what authority they support their claim. The modern information tends to the same purpose as the writ of *quo warranto*, and is regulated by the 9 Anne, c. 20; 60 G. 3; and 1 G. 4, c. 4.

R.

RABBIT WARREN. The lord of a waste, over which there is a right of common, may make rabbit burrows thereon, and the commoner cannot kill the rabbits, though they become so numerous as

to prejudice his right of common, but he may bring an action against the lord for surcharging. *Chitty, Game Laws*, 27.

RACK or QUESTION. An instrument formerly used for extorting confession from accused or suspected persons. Torture was generally abolished on the Continent prior to the French Revolution. There is no instance of the use of torture in England later than 1619; in that year a warrant was issued by the Privy Council, signed among others by Lord Chancellor BACON, to put Samuel Peacock, who was suspected of treason, to the rack. The practice of torture continued in Scotland till 1688, and was only made illegal by the Act of Union. *Wade's British History*, 535.

RACK-RENT, the full annual value of the land.

RAGMAN'S ROLL. So called from one Ragimund, a legate in Scotland, who, calling before him all the beneficed clergymen of that kingdom, compelled them on oath to give in the true value of their benefices; according to which they were afterwards taxed by the court of Rome.

RANGER, a sworn officer of the forest, created by the queen's letters patent. His duties, usually exercised by deputy, are to walk daily through his charge, to prevent trespasses, and to preserve, within the boundaries of the forests, beasts of chase and venery.

RANSOM BILL is the security which the master of a captured vessel gives to the captor, for the ransom of her; but by 22 G. 3, all contracts for that purpose are rendered illegal, and such bills absolutely void.

RAPE, a district of a county, equal to one or more hundreds.

REALTY, an abbreviation for the real estate, as *personalty* is for the personal estate. *Real actions* are such as concern any claim to land, tenement, rents, commons, or other hereditaments.

REASSURANCE is a contract which an insurer, who wishes to be indemnified against the risk he has taken upon himself, makes with another person, by giving to him a premium to *reassure* to him the same event which he himself has insured.

REBUTTER, in pleading at common law, is the answer of the defendant to the plaintiff's *sur-rejoinder;* and the plaintiff's answer to the rebutter is called a *sur-rebutter;* but it is very rarely that parties go so far in pleading.

RECORD, a memorial, or authentic testimony, in writing, generally inscribed in rolls of parchment, and preserved in courts of record. The rolls average from nine to fourteen inches wide. The material on which records are written is clear and well prepared until the reign of Elizabeth. From that period to the present the parchment gradually deteriorates, and the worst specimens are furnished in the reigns of George IV. and William IV. The earliest record written on paper is said to be of the time of Edward II. Records form the highest written evidence of a judicial fact, *and do not permit* of any proof or averment to the

contrary. There are also records of the acts of the legislature and the executive government. The public records are valuable as the evidence of prescriptive and other legal rights, and also as the elucidatory materials of history. Attempts have been made by a series of commissions, issued since 1800, at an expense amounting to nearly one million, to digest, arrange, and methodise these public documents, formerly scattered in their various inconvenient depositaries in the Tower, Chapter-house, Augmentation Office, First Fruits, Somerset House, and other places; but now for the most part collected in the Public Record Office. By 1 & 2 V. c. 49, the master of the rolls is made guardian of the public records, with power to appoint a deputy, and, in conjunction with the Treasury, to do all that may be deemed necessary for the custody and control of the national documents.

Recorder, a person associated, by the queen's grant, with the mayor and other magistrates of any city, or town corporate, having jurisdiction and a court of record, for their better direction in legal proceedings; he is generally a barrister, or other person versed in the law. In the Municipal Corporations, under 5 & 6 W. 4, c. 76, the recorder must be a justice of the borough, but not a member of parliament, alderman, or police magistrate. By 32 & 33 V. c. 23, recorders, in case of unavoidable absence, are given power to appoint deputies, barristers of not less than five years' standing, to act in the local courts of record in which they exercise jurisdiction.

Recoveries and Fines. These were proceedings in the courts of law, by which persons were enabled to bar estates tail, and, with the concurrence of their wives, to bar them of dower, and to exclude remainders. The proceedings in these cases were artificial, fictitious, dilatory, and expensive; calling for the interference of the legislature. Therefore, the 3 & 4 W. 4, c. 74, abolishes fines and feigned recoveries; enables tenants in tail to make an effectual alienation by any deed to be enrolled in Chancery; creates a protector to the estate by requiring that the owner of a beneficial and prior estate for life shall first give his concurrence; provides also new methods for barring estates tail, and expectant interests; and enables married women to dispose of their lands, and money subject to be invested in lands, with the concurrence of their husbands. *Tomline.*

Rector is the chief of a parish, in whom is vested the right to the great tithes. He is either the parson or incumbent, or some other person or corporation, according as the great tithes have or have not been alienated from the spiritual incumbency.

Recusant. Used in the statutes for one who separates from the church, as established by law.

Red Book, *of the Exchequer*, is an ancient record in which are registered those who held lands *per baroniam* in the time of Henry II.

REGALIA, says Spelman, are the royal rights of a king. *Regality* in Scotland was a grant of land with territorial jurisdiction, and the persons receiving it were termed lords of *regality*.

REGISTRARS, officers in the court of Chancery. They are experienced persons who enter decrees and orders, and perform the other duties, the burden of which, in the courts of common law, mostly fall on the chief clerk. There are also registrars of marriages, births, and deaths, whose duties have been stated.

REGISTRY, of deeds, conveyances, wills, and other instruments. It is intended to protect the interest of individuals, and to give notice to purchasers of incumbrances, that they may not be defrauded. But there is no general registry of deeds in England, such not being congenial to the habits or moneyed entanglements of the landed proprietors. As a limited protection, statutes have been passed requiring abstracts of deeds, conveyances, and judgments, affecting lands in Middlesex and Yorkshire, to be registered, upon penalty of being void against subsequent purchasers, if not enrolled. These statutes do not extend to copyhold property, nor to leases not exceeding 21 years, where the actual possession accompanies the lease, and are a source of delay and expense, with little if any practical use. Some deeds must be enrolled in Chancery; but this registry, being partial, does not generally assist those who seek a full knowledge of incumbrances on property. In Scotland, by the act 1617, c. 16, a system of registration of documents on a right principle was established, intimately connected with the titles of real and heritable property, and the due execution of the law. The 1 & 2 V. c. 110, s. 19, provides that no judgment of the superior courts or decree of the courts of equity shall affect lands unless a memorandum of such judgment shall be registered with the senior master of the court of Common Pleas, who shall enter it under the name of the person whose estate is to be affected by it. The 2 & 3 V. c. 11, enacts that these registered judgments shall not be valid for longer than five years; but provides that the entry of them may be renewed. By 23 & 24 V. c. 38, real estate is not affected by a judgment or decree unless actually delivered in execution, and the execution registered.

REGISTRY OF SHIPS. No ship is entitled to the privileges of a British ship unless registered by the collector and comptroller of the customs. Ships exercising the privileges of registered vessels before registry, to be forfeited. The name of the vessel which has been registered is not afterwards to be changed. Name to be painted on the stern, in white or yellow letters, four inches long, upon a black ground, under a penalty of £100. See *ante*, p. 485.

REGIUS PROFESSOR, a reader of lectures in the universities, founded by Henry VIII., who established five lectureships in each university of Oxford and Cambridge, namely, of Divinity, Greek, Hebrew, Law, and Physic, the readers of which are called in the university *statutes*, *regii professores*.

REGULAR CLERGY were the religious orders who lived under some religious rule (*regula*), such as abbots or monks. In contradistinction were the secular clergy, namely, those who did not live under a religious rule, but had the care of souls, as bishops and priests. The clergy of the established church comprehend all persons in holy orders.

RELATOR. a teller or informer; as where the attorney-general, at the *relation* of some person, files an information to have a public charity better established or regulated, the informer is called the relator.

REMAINDER. An estate limited to take effect and be enjoyed after another estate or interest therein has run out or been determined. Remainders are either *vested* or *contingent;* the first are those by which a present interest passes and is certain; the latter are dependent either upon a person uncertain, as one unborn, or upon the happening of an event which is dubious.

REMANETS. Causes which are postponed from one term to another, or from one sitting to another, are termed *remanets*.

REMEMBRANCER, formerly called clerk of the *remembrance*, an officer of the Exchequer.

RENT is the money-service or equivalent received by the landlord for the use of his land or tenements. A *fee-farm rent* is a perpetual rent service, reserved by the crown or by a subject upon a grant in fee simple. The purchaser of fee-farm rent, originally reserved to the crown, but sold under 22 Car. 2, c. 6, has the same power of distress the king had, and so may distrain on other lands of the tenant not subject to the rent.

REPLEVY is used for bailing a man, or giving security in case of distress for rent.

REPORTS. These comprise the decisions on legal issues, which are preserved as authentic records in the archives of the several courts, and communicated to the public in numerous volumes, that furnish the lawyer's library. They contain a history of the several cases, with a summary of the proceedings, which are preserved at length in the record; the argument on both sides, and the reason the court gave for its judgment, taken down in short notes by persons present at the determination. The *Reports* are extant in a regular series, from the reign of Edward II. inclusive; and from his time to that of Henry VIII., were taken by the prothonotaries, or chief scribes of the court, at the expense of the crown, and published annually, whence they are known under the denomination of the *Year Books*. From the reign of Henry VIII. to the year 1865, the task devolved on private and contemporary individuals, who, sometimes through haste or inaccuracy, sometimes through mistake and want of skill, published imperfect and even contradictory accounts of one and the same decision. Each court had its reporters, and their volumes often contain trifling matters that swell them out to an unreasonable and useless bulk, and which had

the effect of making lawyers rely more on the judgments in particular cases than on the general principles of law that form the surest foundation of a sound legal opinion. In 1865, an improved system of law reporting was instituted by the Bar, under the superintendence of the Council of Law Reporting, since incorporated. The statutes form scarcely a less voluminous compilation; a continuation of Viner's abridgment to the present time would occupy at least 100 folio volumes; and if the public acts continue to accumulate in the ratio of late years, they will amount, at the end of the century, to 14,000, exclusive of local and private statutes. Not one-fourth in number of the statutes are in force, and a digest of them is one of the law reforms projected, with a view to which many obsolete statutes have been repealed of late years, and a revised edition of statutes remaining in force is now in course of publication. Difficulties enough, however, remain; and it may be readily conceived what a long and laborious task is imposed on the professional student, and how many years of application are required to explore the great fountains of legal knowledge, so as to become tolerably acquainted with the administrative law of England.

REPRISES, used for abatements or deductions; as in speaking of the clear yearly value of a manor or estate, after deducting rent-charges or annuities, it is said to be so much per annum, besides all *reprises*.

REST, a term used in banking, to denote the undivided profits remaining at the period of balancing. The law so far recognizes rests in mercantile and banking accounts as to allow interest to be charged upon a former ascertained balance. But unless sanctioned by the usage of trade, it is only by express agreement that a debt will carry interest.

RETAINER is a fee or gratuity given to counsel to secure his services, either *generally* or *specially*, in the cause of a client. A *general* retainer, which is accompanied with a fee of five guineas, entitles the party who gives it to a preference in retaining the counsel to whom it is given, specially, in an action in which such party may be concerned. It is the duty, therefore, of the barrister thus retained, in case a *special* retainer should be offered by the adverse party, to ascertain from his general client whether it is his intention to give a special retainer in the cause; and if, as is rarely the case, an answer be returned in the negative, he is then at liberty to accept the retainer of the other party. If no general retainer interfere, the advocate is bound to the party who gave the first special retainer. But a special retainer binds only in the particular case named. And a special retainer on behalf of A. against B. may be superseded by a general retainer on behalf of B. C. and D. A retainer must be given by a party to the record. Thus, in an action against an officer in the army, which was defended at the joint expense of the regiment, a retainer on behalf of the *regiment* was considered not to be binding.

a pu[illegible] right: that is, a right not vested
common to a... The legal presumption is
bank of a stream is the owner of one-h
it flows, but the exclusive ownership of t
Every owner having an equal right to use t
the stream, no one can have the right to
detriment, without consent, the coequal
owner can either diminish the supply of wa
wise descend upon the owners below, nor
upon those above, so as to overflow or inju
same reason, no owner has the right to th
to injure the quality, by which another
modes in which the preference right to th
to the prejudice of others, can be obtained
actual grant or license from the persons wh
or proof of an uninterrupted enjoyment of
a period as the law considers sufficient to c
scription. The period to establish this pre
upon by the courts of law has been twent
term that has been adopted in the 2 & 3 W

ROLL, a schedule of parchment, that ma
hand, in the form of a pipe, and on whic
acts of courts were entered and filed wi
after which they become records of the c
copies of the pleadings are now in many
parliament are the manuscript registers of
old parliaments. The *Calrea'-head roll* wa

e himself; but of the whale he can only claim the head, and queen the tail. The reason of this whimsical division, as ned by the ancient records, is to furnish the queen's wardrobe whalebone. But, as Mr. Christian remarked, the reason is whimsical than the division, for the whalebone lies entirely ie head. The claim is obsolete, or nearly so.

UBRICS, so called because anciently written in red letter; they the titles of chapters in certain ancient law-books; also the ctions laid down in the Liturgy for regulating the service of Established Church.

ULE OF COURT, an order of one of the three superior courts of mon law, made either between parties to a suit or motion, or to late the practice of the court. The rules which regulate the tice of the court of Chancery are called *orders*.

ULES OF THE QUEEN'S BENCH. Certain limits without the s of the prison, within which imprisoned debtors were allowed re, on giving security to the marshal not to escape.

UNNING LETTERS, in Scotch law of equivalent import to the ish Habeas Corpus Act, which is unknown to the law of Scot- ; and are a form by which a prisoner gets his trial brought on, release from confinement, if he is not brought to trial.

S.

CRILEGE, a desecration of anything reputed holy. The aliena- of lands given for religious purposes to laymen was also so nated.

LIC LAW, an ancient law of the Franks, adopted in many pean countries, by which males only are capable of inheriting. s the existence of this law in Hanover that precluded Queen ria from the regal inheritance of that kingdom on the death illiam IV. The same law prevailed in France under the old rchy, and was revived under Napoleon III., the imperial suc- n being limited, by decree of the senate, from male to male, der of primogeniture, to the perpetual exclusion of females.

LT SILVER, one penny paid at the feast of St. Martin by the s of some manors, as a commutation for carrying their lord's rom the market to his larder.

NCTUARY. Ancient superstition gave peculiar privileges to crated grounds or places, so that delinquents who took refuge were protected from criminal justice. Thus, if a person ed of any crime except treason or sacrilege, had fled to a h or churchyard, and, within forty days after, went in sack- and confessed his guilt before the coroner, disclosing all the umstances of his offence, and thereupon took oath to abjure alm, his life *was spared, provided* he observed the conditions

of his oath, by going with a cross in his hand, and with all convenient speed embarking at the port assigned. By this abjuration, however, his blood was attainted, and he forfeited all his goods and chattels. These immunities were much abridged under Henry VIII., and, by the 21 Jac. 1, c. 28, all privilege of sanctuary is abolished.

SCAN. MAG., *Scandalum Magnatum*, or great scandal, speaking words derogatory of peers or high functionaries, and was, or is, punishable by a proceeding against the authors, compelling them to produce their authority. A peeress is not within the statute. But the proceeding is in disuse, and punishment by action, information, or indictment the more usual course.

SCAVAGE, a kind of toll or custom, exacted by mayors, sheriffs, &c. of merchant-strangers, for wares exposed to sale within their liberties, prohibited by the 19 H. 7, c. 7; and in the city of London commuted for a sum of money payable by government, under 3 & 4 W. 4, c. 66.

SCIRE FACIAS, the name of a judicial writ, to call a man to *make known* to the court whence it issues why something should not be done; *e. g.* letters patent be repealed.

SCOT AND LOT, a term including all parochial assessments for the poor, the church, lighting, cleansing, and watching. The right of voting for members of parliament, and for municipal officers, used to be exclusively, in many places, vested in the payers of *scot* and *lot*.

SCRIVENER, one who is employed to draw up and engross deeds, conveyances, and securities for money—an obsolete term.

SCUTAGE was a tax of contribution, raised by those that held lands by knight's service, towards furnishing the king's army, at one, two, or three marks for every knight's fee. 1 *Bl.* 309.

SEAL DAYS, certain days in the court of Chancery, appointed by the court, before or after term, to hear motions; they are four in number, and each seal is usually at the interval of about a week.

SEALER, an officer in the court of Chancery, whose duty was to seal writs and other legal instruments in the presence of the lord chancellor; office ceased under 3 W. 4, c. 3. There is also a *sealer* of the writs issued by the other courts of Westminster, the profits of which office, formerly part of the king's ancient hereditary revenues, were vested in the Duke of Grafton, by alienation from the crown, in the reign of Charles II.

SECONDARIES, officers next or second to the chief officer, as the secondaries of the sheriffs of London.

SEDERUNT, *acts of*, ordinances of the court of session in Scotland, under the authority of the stat. 1540, c. 93, by which authority is given to the court to make such regulations as may be necessary for the ordering of processes and expediting of justice. *Bell's Dict.*

NIOR. Applied to the lord of a fee or manor, and a fee or lordship is thence denominated a *seigniory*.
NIORAGE, a deduction from bullion brought to the Mint to be ged for coin.
IN, in the common law, signifies possession.
SCHAL, a steward with the power of dispensing justice; as h seneschal or steward of England.
TUAGINT, the Greek version of the Old Testament; so called the seventy translators, who were in truth seventy-two, , six out of every one of the twelve tribes, *Litt. Dict.*
UESTRATION is the setting aside from both parties the matter troversy. It is also a kind of execution for debt in the case eneficed clergyman; the profits of the benefice being paid o the debtor until his claim be satisfied. The profits of fice may be also *sequestrated* during a vacancy, and received churchwardens appointed by the bishop, for the benefit of xt incumbent. By the custom of London, if a citizen owe to another and abscond, leaving goods in a house locked up, reditor may *sequester* the house and goods, and in six days' condemn them. In the mercantile law of Scotland, seques- n is equivalent to the process of bankruptcy in England.
JEANTS-AT-ARMS. Their office is to attend the royal person, est offenders of rank, and attend on the lord high steward of nd, sitting in judgment on traitors Their number was limited irty by 13 R. 2, c. 6. Two of them attend on the houses of ment. They are in the old books called *Virgataries*, because arried silver rods, gilt with gold, as they now do maces.
MONIUM was an interlude or historical play, acted on high sion days, in the body of the church or cathedral, by the in- clergy, and was a mingled dramatic and religious celebration. were the ancient mysteries, and the ceremony of the Boy- p. The Eton Montem, now abolished, was the last remaining ple of these shows.
VITOR, a serving man. Certain poor scholars at Christchurch, d, are so called.
SION *of Parliament*, includes the entire term from the assem- for the despatch of business to the prorogation by royal rity of both houses. But the assembling and prorogation are fficient to constitute a session, unless one bill at least have l both houses, and received the royal assent. The progress a measure makes in one session does not influence its position next, or in any other; for, if not completed previous to the gation, it must in any following session be commenced afresh.
T-OFF is where two persons, having opposite demands against other, the one sets his demand against the demand of the , either in whole or in part. It would be manifestly unjust such a case a solvent party had to pay his own debt in full to solvent party, from whom nothing could be recovered.

Settlement, in its most general sense, is a disposition of property for certain purposes by the owner, who, in relation to such disposition, is called the settler or grantor. A settlement may be either by deed or will, but the term is most commonly applied only to settlements by deed. A consideration is not necessary for the validity of a deed at law. Though a deed may in many cases be void as against strangers for want of consideration, it is valid as between the parties. Settlements by deed, therefore, may either be made upon good consideration, or they may be purely voluntary. The most usual and important species of settlements are those pertaining to marriage, and may be either such as are made previous to and in consideration of marriage or subsequent to it. For parochial settlement, see p. 163.

Settlement, *Act of*, the 12 & 13 W. 3, by which the crown was limited to the house of Hanover, being Protestants, and some new provisions were added strengthening the constitutional securities of the Bill of Rights.

Severalty. An estate in *severalty* is where it is held by one person in his own exclusive right, without any other being joined or interested therein.

Severance, the singling or parting of two or more joined in one writ of action. *Severance of corn* is the cutting and carrying it off from the ground; and the setting out tithe from the rest of the corn was called a *severance*.

Sewer, a place, according to Lord Coke, where water issues. Many statutes have been passed relating to sewers, and the defence of the land against the sea and land-floods, but the most comprehensive is the 3 & 4 W. 4, c. 22, amended by 12 & 13 V. c. 50, and other acts. According to these acts, no commissioner of sewers who has not already acted as such can be hereafter appointed, unless possessed of a clear income of £100 a year, arising from land, tenements, or hereditaments, freehold or copyhold, or held for a term of not less than sixty years absolute; or held for a term of not less than twenty-one years, of which ten are unexpired, of the clear yearly value of £200; or heir apparent of a person possessed of £200 a year clear; or unless as the agent of some person possessed of property to the amount of £300 a year: penalty £100 for acting without qualification. But no mayor, bailiff, or other ex-officio commissioner required to qualify. Every commission to continue in force ten years, unless sooner determined. Commissioners may make separate rates for every separate level, valley, or district, and appoint surveyors, collectors, and other officers for the same. Commissioners empowered to impose fines not exceeding 40*s.*; they may also appoint dyke-reeves, who must be occupiers of not less than ten acres of sewable land. Persons not keeping in repair any bank, flood-gate, sewer, &c., to which they are liable, the repairs may be executed by commissioners after seven days' notice, the parties liable being charged with the expense thereof.

tan Sewers Acts.—The jurisdiction under these acts is d in the Metropolitan Board of Works, constituted by V. c. 120, and amending acts. An act of 1865, ; 29 V. c. 75, provides for the utilization of sewage e limits of the metropolis, and empowers local boards to its application to agricultural purposes. By s. 4, the horities have all the powers given to them under the ealth Act; expenses to be defrayed out of the borough borough rate, and compensation to be made to persons from the operation of the act. Sewer authorities may in carrying out works for the benefit of their respective They may institute legal proceedings against parties it the pollution of watercourses by sewage within or heir district. No sewer to be made so as to drain direct stream. For the purpose of utilizing sewage, authority contract for the supply of it to any body of persons for a not exceeding twenty-five years. By 30 & 31 V. ewer authorities are empowered to exercise their authority their district in relation to the distribution of sewage, urchase land for such purpose, and to act in uniting

ONEY, an ancient impost charged upon the ports, towns, roughs, and counties of the kingdom, which was revived ne of Charles I., by writs called *ship-writs*, for providing the king's service. Such a mode of raising money is illegal by the Petition of Rights.

ER, a Dutch word, signifying master of a ship, but used mon seaman; a skipper.

, or county, for the terms are synonymous, is the name of ricts into which the United Kingdom is divided. The this local division of the island cannot be ascertained. It ascribed to Alfred, but Asser, in his history of that prince, mention the fact. Sir F. Palgrave has shown the shire in ses to have been identical with Saxon states or kingdoms. f of officers attached to shires, namely, the lord-lieutenant, otulorum, or keeper of the county records, high sheriff, general of taxes, coroners, justices, and clerk of the peace, e great importance of this territorial division in the civil ent of the kingdom.

MEN, officers yearly chosen, according to custom, in great , to assist the churchwardens.

T, is one of the king's seals, used in sealing his private and all such grants as pass his Majesty's hand by bill signed. l is always in the custody of the king's secretaries. 2 *Inst.*

MANUAL. The signature or subscription of the queen is so and is usually placed at the top left-hand corner of the ent. It must be *countersigned* by a principal secretary of

state, or by the lords of the Treasury; when attached t
or warrant, to be accompanied by the signet or privy seal.

SILVER. By 56 G. 3, c. 68, the standard silver is eleve
two pennyweights of fine, and eighteen pennyweights of
the pound troy; and in weight, after the rate of
shillings to every pound troy, whether coined in crown
pieces of a lower denomination.

SINECURE is when an office has no duties, or only nomin
attached to it. Also, when a church is fallen down, and t
becomes destitute of parishioners, it is said to be a
Power is granted to bishops, in certain cases, by 1 & 2 V
s. 16, to unite with other benefices sinecure rectories.

SITTINGS, the name given to the courts of *Nisi Prius* i
and Middlesex; those for Middlesex were established in
of Elizabeth, empowering the chief justices to try within
or within four days after the end of the term, all the issu
in the courts of Chancery and Queen's Bench; and that
justice of the Common Pleas and the chief baron shoul
like manner, the issues joined in their respective courts.
absence of the chief, the same authority is given to tw
judges or barons of the court. The 1 W. 4, c. 70, provi
not more than twenty-four days after Hilary, Trini
Michaelmas term, nor more than six days after Easter te
exclusive of Sundays, shall be appropriated to SITTINGS in
and Middlesex for the trial of issues of fact; provided
day may be appointed for a trial at bar, and the day so a
for the purpose be taken to be a part of the precedin
provided also, that a day may, by consent of parties, be a
for trial of any cause at *Nisi Prius*, such day not being wi
twenty-four days mentioned.

SLAUGHTERING HOUSES. By 26 G. 3, c. 71, any person
a place for slaughtering horses, geldings, asses, sheep,
other cattle, not killed for butcher's meat, shall obtain
from the quarter sessions, first producing from the parish
cate of fitness and ability. Persons slaughtering horses
without license are guilty of felony, and may be tran
Inspectors are chosen annually, and their occupation i
over their dwellings. The act does not extend to curri
mongers, tanners, or persons killing aged or distempered
but such persons killing *sound* cattle are liable to a pe
£20. The license must be annually renewed, by 7 & 8 V
and obstructing inspector in his duty, penalty £10.
keeping slaughtering houses must print or affix their na
the door or gate of their premises, or penalty for neglect,
13 V. c. 92, s. 7, any sum not exceeding £5. By the s
horses or other cattle brought to be slaughtered must have
forthwith cut from the neck, and be killed within thre
during the three days they must (by s. 7) be supplied

ent quantity of fit and wholesome food and water;" penalty
nission, not exceeding £5. Using or employing any horse or
intended for slaughter subjects to a penalty not above 40s.
must be kept, containing a description of the animals for
ter, their colour, marks, and gender, and refusing inspection
of to justice or constable, penalty any sum not above 40s.
perly conveying any animal in a vehicle for slaughter, so as
bject it to unnecessary pain or suffering, penalty for first
e not above £3, for a second offence £5. Horse-slaughterers
t at the same time be licensed as horse dealers. By the City
ndon Sewers Act, all slaughter-houses to be licensed, and to
bject to inspection. Inspectors of slaughter-houses to inspect
hawked about or exposed for sale, and destroy the same if
for human food. Offenders exposing unwholesome meat to
t not above £5 for each offence.

AVE TRADE. By 3 & 4 W. 4, c. 73, it was provided, that
ry should cease throughout the British dominions, Aug. 1,
. For the compensation of the persons entitled to the services
e manumitted slaves, the sum of £20,000,000 was granted,
apportioned among the nineteen colonies of the West Indies,
ape of Good Hope, and Mauritius.

or SOKE (*Sax.*), power or liberty to administer justice and
e laws; also the territory or limits within which such power
rcised: hence *soca* is used for a seigniory, or lordship, with
nchise of holding a court of sockmen. *Socage* is applied, in
it general sense, to a tenure by any fixed or determined

ITOR, one who is entitled to transact business in Chancery,
is done by an attorney in the courts of common law.

ALTY, a bond, or other deed, under the hand and seal of
es.

ER, a legal addition usually given to unmarried women,
om their supposed occupation in spinning.

. Under this denomination are included all inflammable
ed by distillation, as brandy, rum, Geneva, whisky,
he strength of which for the purposes of taxation is
by Sykes's hydrometer. The 23 & 24 V. c. 114,
o one act, and amends the excise regulations relating
lling, rectifying, and dealing in spirits. It comprises
, but they can only be intelligible to distillers, and
rein. All spirits distilled or made in the United
deemed *British* spirits; all spirits of the first extrac-
by one distillation of wash are called *low wines;* all
ed by re-distillation of low wines, or any further re-
and conveyed into feints receiver, are called *feints;*
its produced by re-distillation, and which have not
our given them, and all liquors mixed with such
led *plain British spirits;* all other spirits produced

by re-distillation, and which have had a *flavour* given them, and all liquors mixed with such spirits, are deemed a British compound, called *British brandy;* other spirits produced by re-distillation, and which have been mixed with juniper berries, caraway seeds, aniseeds, or any other seeds or ingredients, and all liquors mixed with such spirits, are called *British compounds;* lastly, all British spirits of the strength of forty-three per cent. above proof, and all spirits of a greater degree of strength, are called *spirits of wine.* No dealer in British spirits to sell, or have in his possession, any plain British spirits, except spirits of wine, of any strength *exceeding* the strength of twenty-five per centum above hydrometer proof, or of any strength *below* seventeen per centum under hydrometer proof; or any compounded spirits, except shrub, of any greater strength than seventeen per centum under hydrometer proof; on pain of forfeiting all such spirits as shall be sold, had, or kept by such dealer, with the casks or packages containing the same; which may be seized by any officer of excise. No license to be granted for retailing spirits within *gaols, houses of correction,* or *workhouses for parish poor;* nor are spirits to be used there, except as medicinally prescribed by a regular physician or apothecary. Penalty for offences committed by gaolers or masters of workhouses, £100. Persons *hawking spirits* to forfeit them and £100, and may be convicted by one justice; and if the penalty be not paid immediately, committed to the house of correction for three months or until paid. Any person may detain a hawker of spirits, and give notice to a peace officer, who is to carry the offender before a justice. By 24 & 25 V. c. 91, s. 22, the powers now possessed by excise officers for the searching for and seizure of private stills, the materials for illicit distillation, or malt made without a license, are extended to the officers of customs.

Spiritual Persons include such as are licensed, or otherwise allowed to perform the duty of any ecclesiastical office whatever. 1 & 2 V. c. 106. *Spiritualities of a bishop* are those ecclesiastical profits which he receives as a bishop, and not as a baron of parliament.

Spring Guns. By 24 & 25 V. c. 100, s. 31, if any person set or place in his grounds any spring gun, man-trap, or other engine calculated to destroy human life, or inflict grievous bodily harm, upon any trespasser or other person coming in contact therewith, he shall be guilty of a *misdemeanour.* Not to extend to any gin or trap set to destroy vermin; nor to any engine placed for the protection of a *dwelling-house* from sunset to sun-rise. Act does not extend to Scotland.

Stallage, a compensation or sum of money paid to the lord or owner of the soil, for the liberty to erect stalls, or to remove a stall from one part of a fair to another.

Stannaries, Latin *stannum,* "tin," are the districts of Cornwall and Devon where the tin-mines are wrought and the metal

purified. They form part of the duchy of Cornwall, erected by Edward III. and granted to the Black Prince, from whom they are inherited by the Prince of Wales. The miners and tinners are privileged to sue and be sued only in their own courts, held before the lord warden or his deputy; so that they may not be drawn from their business to attend lawsuits in distant courts. The tin duties have been abolished, the stannary courts remodelled, and further regulations have been made respecting them, by 2 & 3 V. c. 58. *See* also 18 & 19 V. c. 32; 32 & 33 V. c. 19.

STAPLE, a mart or market; also any goods generally vendible and not subject to perish. *Statute Staple* (now obsolete) was a bond of record acknowledged before the mayor of the staple, by virtue of which the creditor might forthwith have execution of the body, land, and goods of the debtor.

STAR-CHAMBER, an arbitrary tribunal, whose judges were the chief ministers of the crown, that took cognizance of almost every description of offences, short of those that inflicted capital punishment. It was established under 3 H. 7; but having greatly exceeded its original powers, was abolished by 16 Car. 1, c. 10.

STATUTE DUTY. Until the passing of 5 & 6 W. 4, c. 50, the inhabitants and occupiers of land and tenements were obliged to furnish horses, carts, and labourers, in certain proportions, for the repair of the highways, which was called *statute-duty*.

STATUTE OF FRAUDS, one of several useful statutes passed in the reign of Charles II., to prevent disputes and frauds in the transfer of property, by requiring in many cases written evidence of an agreement. Before this enactment many conveyances of land were made without any writing as evidence of the conveyance. An estate in fee simple could be conveyed by livery of seisin, accompanied with proper words, and a use could be declared by parol. No writing was necessary to convey an estate in possession, for such an estate was said to lie in livery, but a reversion could only be conveyed by deed. All this was changed by the Statute of Frauds, which also introduced salutary precautions in the sale of goods, and which have been extended by subsequent acts.

STATUTE-MERCHANT (now obsolete), a bond of record, by which the obliger conditions that if the debt be not paid at the day, execution may be awarded against his body, land, and goods.

STEAM-ENGINES. *See Smoke Nuisance*, Pt. vi. chap. x. p. 660.

STERLING, a term by which genuine English money is discriminated. It is derived from the *Esterlings* or merchants of East Germany, who, by command of King John, manufactured a more pure and perfect coin. Hoveden writes it *esterling*.

STORES, naval and military, include all arms and munitions of war.

STRANDING is where a ship, by accident, and out of the ordinary course of her voyage, gets upon the ground or strand, and receives

injury in consequence. Negligence of the crew does not discharge the underwriter, if the loss is occasioned by one of the perils insured against, *Bishop* v. *Pentland*, 1 M. & R. 42.

SUB-DEACON, an ancient officer in the church, made by the delivery of an empty platter and cup by the bishop, and of a pitcher, basin, and towel by the archdeacon; his office was to wait on the deacon, and carry away the plate with the offerings at sacraments. *Cowel.*

SUBINFEUDATION had some analogy to the existing practice of underletting in Ireland: it was where the inferiors, in imitation of their superiors, began to carve out and grant to others smaller estates than their own, to be held of themselves, and so proceeding downwards, till the superior lords observed that, by this method of subinfeudation, they lost all their feudal profits of wardships, marriages, and escheats, which fell into the hands of the middle lords, who were the next superiors of the terre-tenant, or him who occupied the land.

SUBPŒNA, a writ whereby the party is called to appear at the day and place assigned, under a penalty. A witness is allowed his necessary expenses of the journey, but is not in general entitled to remuneration for *loss of time;* though in some instances it is allowed to attorneys and medical practitioners. The expense of making scientific experiments, with a view to evidence, is not allowable, 3 *Bar.* & *Cres.* 72.

SUBSISTENCE MONEY is the money paid to soldiers *weekly;* which is short of their *full* pay, because their clothes, accoutrements, &c. are to be accounted for. It is, likewise, the money advanced to officers, until their accounts are made up, which is commonly once a year, when their arrears were discharged.

SUFFRAGAN, an assistant appointed by the bishop of the diocese to assist him in his spiritual duties; or one who supplies the place of the bishop; it is also applied to the bishops themselves, in contradistinction to their metropolitan or archbishop.

SUIT is the form of application to the judicial tribunals of the State, for the redress of injuries alleged to be sustained. Lawsuits, both in the courts of common law and equity, are almost invariably carried on by attorneys or solicitors in the name of the plaintiff or defendant; and the proceedings therein, according to the established principles of law and the rules of the courts, constitute the "practice" of the profession.

SUITORS' FUND in Chancery originated under the Long Parliament, which directed all moneys of malignants and delinquents to be paid into the dead stock of the court of Chancery, and applied to the public service. Its amount is considerable, from money unclaimed belonging to suitors in that court: it is now merged in the Consolidated Fund, provision having been made for meeting claims on it. *See* 31 & 32 V. c. 88.

SUMMER-HOUSE SILVER, a payment to the lords of the wood in

the wealds of Kent, who used to visit those parts in summer, when the sub-tenants were bound to prepare little summer-houses for their reception, or else pay a composition in money. *Cowel.*

SUMMONS, a notice from a justice to a person to appear before him, to answer some charge, and, if not obeyed, is commonly followed by the more compulsory process of a warrant for his apprehension. In criminal charges, as assaults, thefts, and other felonies, and also in cases where the body of the offender is liable, a warrant is the regular process, not a summons. Within the metropolis limits, a summons is served by delivering a copy of it to the accused party, or his wife, servant, or some adult inmate of his family, explaining to the wife its purport.

SUPERCARGO, as the name imports, is a person employed by merchants to overlook and take care of the cargo of a ship during the voyage, and dispose of it to the best advantage at the place of destination.

SUPERSTITIOUS USES. A devise of lands or goods for the maintenance of a priest or chaplain, to celebrate mass, pray for the soul of the deceased, to abridge the term of purgatory, or for a lamp to be kept perpetually burning in a chapel, are superstitious uses, by 1 E. 6, c. 14. Such bequests were frequent in popish times, and are still continued in Ireland. The 2 & 3 W. 4, c. 115, made some change in the law respecting superstitious uses, by placing Roman Catholics on the same footing as Protestant Dissenters in respect of bequests relative to their religious worship, schools, and charities. But though it is now lawful to give money by will for Catholic schools, or for promoting the Roman Catholic religion, it is not lawful to give money for masses and prayers for the soul of the testator.

SURNAMES. The spelling of surnames, like the assumption of them, appears (*Law Review*, Feb. 1849) to be left much to the arbitrary will of individuals. The direction in wills and other legal instruments, that a person shall, by the sovereign's license, or by act of parliament, assume a particular name, has probably given rise to the impression that those are the only means by which the change of name can be made; but there are several decisions at law—one as to indictment for felony; another on the validity of a marriage; and two others with reference to the due compliance with the directions of a will for the change of name, which will did not specify the means to be used—where the assumption and use of a new name by a person *of his own authority alone*, was held to be a legal change of name; and there is no doubt that the law is so. But though a man may call himself by any name he likes, he cannot compel official persons or others to recognize the change.

SURPLICE FEES are ecclesiastical dues payable to the clergy on marriage, churchings, christenings, and burials.

SURROGATE is one that is substituted or appointed in the room of another; as the bishop or chancellor's surrogate. *Cowel.*

SUS. PER COL., an abbreviation for *suspendatur per collum*; and which the judges used to write on the calendar left with the sheriff, opposite the name of any prisoner sentenced to be "hanged by the neck."

SWANMOTE, a court formerly held twice a year before the verderers of a forest, concerning matters of the forest.

T.

TABARD. Bachelor-scholars, on the foundation of Queen's College, Oxford, are called tabarders, from a short gown worn by them, called *tabard*. *Cowel.*

TABLE RENTS, the rents paid to bishops and others, towards their table or house-keeping expenses.

TACK (Scotch), a lease; *tack duty*, the rent reserved on a lease.

TAIL, from the French *tailler*, to cut or carve. See *Entail*.

TAILZIE, in Scotch, the equivalent of the English word entail, which last has colloquially superseded it in Scotland.

TALLY, a stick cut in two parts, on each side of which is marked, with notches or otherwise, what is due between debtor and creditor; the ancient way of keeping accounts, one part being kept by the debtor and the other by the creditor. From the time of Henry I. to the reign of Queen Anne, the legal tender money of England consisted of wooden tallies issued by the Exchequer, which circulated concurrently with the coins or metallic money of the realm, and which were received, as exchequer bills now are, in the payment of taxes: the counter-tally was laid up in a safe place while the other half circulated from hand to hand till brought in by the last person who had given value for it, to be taken up in money or exchanged. The burning of the old exchequer tallies, by overheating the flues, is considered to have been the cause of the destruction by fire of both houses of parliament in 1834.

TALLYMAN, a person that sells or lends clothes, goods, or the like, to be paid for by so much per week, month, or other fixed period.

TARIFF, a table specifying the duties, drawbacks, and bounties charged or allowed on the export or import of articles of foreign and domestic produce.

TAXING COSTS. Submitting the bills of attorneys to the masters of the respective courts, who make such deductions therein as they think reasonable, and the remaining charges allowed are certified, and called the masters' *allocatur*.

TEINDS (Scotch), tithes; *teind-masters*, those entitled to tithes.

TEMPLARS, a religious order of knighthood instituted about the year 1119; so called because they dwelt in part of the buildings belonging to the Temple of Jerusalem, not far from the sepulchre. *Cowel.*

TENANT-RIGHT, a species of customary estate in the northern

ts of England, by which border services against Scotland were idered before the union with England. Under this tenure ates were held of the lord of the manor, or by the payment of tain customary rents, and the render of border services, and were eritable, and not devisable by will till made so devisable by 1 V. 26. In certain districts of Ireland, tenant-right exists, or is imed, of a different kind; consisting of the claim of the tenant the expiration of his lease, on the landlord, for reimbursement account of capital laid out and fixed in unexhausted improve-nts of the owner's lands.

TENDER, *of money*, or rather satisfaction, is, in many cases, a to an action. A tender of bank-notes is good, unless specially ected to at the time, 33 *Rep.* 654. So is a tender of foreign made current by proclamation. So is a tender of provincial nk-notes, or a draft on a banker, unless objected to, *Peake*, 239. th respect to the *persons* to whom the tender should be made, is sufficient if it be to the creditor, or any authorized agent. nder to an attorney authorized to sue out a writ is good, *Douglas*, . A bailiff who makes a distress cannot delegate his authority; refore, a tender to *his agent* is insufficient. A tender to one of eral joint creditors is a tender to all. By several statutes, a ty having committed a mistake or irregularity in law, may in e cases tender compensation to the party injured, and it will be r to all actions, whether he thinks proper to accept it or not.

TENEMENT includes land, houses, and every species of real pro- which may be held, or in respect of which a person may be *ant.*

TENTHS. Tenths and fifteenths were temporary aids issuing out sonal property, and granted to the king by parliament. They ormerly the real tenth or fifteenth, when chattel or movable ty was much less considerable than at the present day.

TENANT-TENANT, the actual possessors of the land.

TERRIER, a land roll or survey of lands, either of a single person parish, containing the quantity of acres, tenants' names, like.

THANE, the title of those who attended the English-Saxon kings courts, and who held lands immediately of those kings.

TICKET-OF-LEAVE, a license granted to a convict for good be-n a penal settlement or at home, to be at large and return ce where he was convicted, but revocable on misconduct into crime.

TINGWALD, the ancient parliament or convention of the people of Man.

TIPSTAVES. Officers appointed by the marshal of the Queen's ttend upon the judges with a rod or staff tipped with take into custody prisoners either committed or turned judges at chambers.

TORT, French word, *from the Latin tortus*, a wrong or injury.

TOURN, or TURN, a court, incident to the office of sheriff; so called from the sheriff taking a *turn* or circuit about his shire, and holding his court in several places.

TOWN is the generic term for a city, borough, vill, or tithing. To be a town it is not necessary that it should be incorporated, nor send members to parliament, nor have the privileges of a market. And it has been held, that wherever there is a constable, there is a township, 1 *T. R.* 376.

TRAVERSE. When a defendant denies or disputes the averments of the plaintiff's declaration, he is said to traverse. In this sense it is used when a party indicted for a misdemeanour traverses or denies the indictment, so that it stands over until the ensuing sessions.

TREES. If a tree grow near the boundary of the land of two persons, so that the roots extend under the soil of each, the property in the tree belongs to the owner of the land in which the tree was first sown or planted, *Moo. & Malk.* 112. *Timber trees* include oak, ash, and elm; or in some places, by local custom, beech and others which are commonly used for building, are, on that account, considered as timber. The oldest houses in London are built of beech-wood, which, when old, is not easily distinguished from oak.

TRIAL AT BAR, a trial which takes place before all the judges, at the bar of the court in which the action is brought.

TRIENNIAL ELECTIONS. By 6 W. & M. c. 2, the utmost period allowed the same parliament to sit is three years; after the expiration of which, reckoning from the return of the first summons, parliament ceased to have a legal existence. But by the 1 G. 1, c. 38, under the pretext of guarding against the designs of the papists, and to prevent the expense and animosities occasioned by frequent elections, the term was prolonged to seven years.

TRINITY-HOUSE is a kind of college, incorporated by charter in 1514; re-incorporated and extended in 1685, from thirteen to thirty-one brethren. The corporation, originally a company of pilots for the royal navy, consists, at present, of a master, deputy, four wardens, eight assistants, and seventeen brethren. Eleven of the thirty-one members are usually men of high station, and twenty experienced commanders of merchant ships; the master and deputy are chosen annually. The chief functions of Trinity corporation consists in examining and licensing pilots, in erecting seamarks and lighthouses, in superintending the navigation of the river Thames, and the appointment of the harbour masters, on which they have a veto.

TRIORS, such as are chosen by the court to examine whether the challenge made to the jury, or any of them, is just.

TROPHY-MONEY, money formerly raised towards providing for the London Militia.

TROVER. An action of trover lies for goods which one has found

and refuses to restore to the owner; or if another has my goods, by delivery to him or otherwise, and he sells or uses them without my consent, this is a conversion, for which trover lies; so, too, if he does not actually convert them, but refuses to deliver them to me on demand.

U.

UNFUNDED DEBT. A mass of floating debt due by government, chiefly under the form of exchequer bills, that have been issued to meet any public exigence, for which no provision had been made, or the provision had proved insufficient, or not forthcoming at the time wanted.

UNION. The consolidation of two churches into one benefice, which is allowed by 37 H. 8, c. 21, and 4 & 5 W & M., when the churches are not more than two miles asunder. Under these statutes the numerous small parishes of many of the cathedral cities, as London, York, and Norwich, have been compressed into a less number of benefices.

USAGE differs from custom and prescription, inasmuch as a man may claim a rent, common, or other inheritance by prescription, but not by usage.

USE, at common law, was a beneficial enjoyment in land distinct from the ownership, and was a usufructuary interest in possessions, introduced from the civil law by the clergy to evade the prohibitions against mortmain. After trying sundry devices, such as purchasing lands of their own tenants, suffering recoveries, and buying lands round the church and making them churchyards, by bull from the pope, they invented this way of conveying lands to others for their *own use;* and, this being a matter of equity, it met with a favourable construction from the judge of the Chancery Court, who, in those days, was mostly a priest. This mode of settlement extended to other classes during the civil wars of the Houses of York and Lancaster, when the parties in these domestic broils, to secrete their possessions and transmit them to their issue, despite of attainders, began the *limitation of uses*, with power of revocation. The practice was interfered with and limited by 27 H. 8, c. 10, by joining the possession to the use, as it is usually termed, transferring use into possession.

USE AND OCCUPATION. In cases where a house, &c., is not let by any deed or lease under seal, the proper remedy is an action on premises for use and occupation. It will not serve to try a *right* to premises, but is founded on a contract expressed or implied between plaintiff and defendant. Nor will the action lie where premises have been let for an illegal or immoral purpose, such as female prostitution.

USES AND TRUSTS are akin to each other; use being the profit

of land upon a trust reposed in another, that he to whose use the trust is made shall take the profits. Uses apply only to lands of inheritance; the trust being a device of equity, as just intimated, only attaches on the profit of personalty. *Tomlin's Dict.*

USHER, a door-keeper; a subordinate officer in the courts of law.

UTERINUS FRATER, a brother by the mother's side.

UXORIUM, a mulct or fine paid for not marrying. *Little's Dict.*

V.

VACATION, the time between the end of one term and the beginning of another, which commences the last day of every term as soon as the court rises. There is also a vacation in the *spiritualities*, from the death of the bishop or other spiritual person until the appointment of another.

VAGABOND, a wandering beggar or idle person who has no fixed place of abode. The Vagrant Act gives power to *any person whatever* to apprehend any person offending against the act, or, as it is termed, committing an act of vagrancy.

VALET was anciently a name denoting young gentlemen of rank and family, but afterwards applied to those of lower degree, and is now used for a menial servant, more particularly occupied about the person of his employer.

VALUABLE CONSIDERATION is distinguished by Blackstone from a *good* consideration; the latter is a consideration of blood, or natural affection; the former is money, marriage, or the like, and is the equivalent given for the thing purchased or contracted for.

VASSAL, a feudal tenant or grantee of land.

VENIRE FACIAS, a judicial writ, awarded to the sheriff, to summon a jury of the neighbourhood to try the cause at issue.

VENUE is the place or county where an action is to be tried, and whence the jury is summoned for the trial. In local actions the venue must be alleged according to the truth of the fact: transitory ones, such as debt, assumpsit, trover, and the like, may be laid in any county; but the judges may alter the venue, if they believe there cannot be an impartial trial where the venue is laid. But in criminal cases, by 21 Jac. 1, c. 4, all informations on penal statutes must be laid in the county where the offences are committed.

VERDERER, an officer sworn to keep the assize of the queen's forest, and whose duty is to take care of the vert and venison.

VERGERS, officers carrying white wands in courts of justice or in cathedrals.

VERT, in the forest laws signifies everything which bears a green leaf that may cover a deer; it is sometimes taken for a grant by the king to cut green wood in the forest. 4 *Inst.* 327.

r, a place adjoining a church where the vestments of the
i are kept; also a meeting at such place to consult on the
' the church or parish. In general, if a parishioner be
of the vestry-room by the clerk of the vestry, and he
appear that he has a right to come into the room, and to
it and vote in the vestry, action on the case lies as a
Mod. Ca. in L. & E. 52, 534. By custom as well as
here may be *select vestries*, or a certain number of persons
have the government of the parish, make rates, and audit
nts of churchwardens.

GENERAL, an officer under the bishop having cognizance
ial matters, as correction of manners and the like, as the
rincipal has jurisdiction of temporal matters, as of wills
inistrations: both officers are commonly united under the
chancellor. *Burn's Dict.*

ARMIS are words used in indictments to express the charge
ible and violent perpetration of any crime or trespass.

or VILLAGE, is sometimes taken for a manor, and some-
a parish, or part of it. But a *vill* is most commonly an
or hamlet of a parish, consisting of a few houses sepa-
m it. A manor may consist of several villages or one
Blackstone says, but the point is disputed by some, that
ing, and town are of the same signification in law.

N, or VILLEIN, a man of servile condition, of which there
merly two sorts: one, *villain in gross*, who was imme-
ound to the person of his lord and his heirs; the other,
regardant, who was bound to the land as belonging to or
to his lord's manor.

TION BOOKS. These were compiled when visitations were
made into every part of the kingdom, to inquire into the
families, and to register such marriages and descents as
fied to them upon oath. They contain the pedigree and
he nobility and gentry of the kingdom, from the twenty-
of Henry VIII. to the latter end of the seventeenth cen-
ing which period the two provincial kings-at-arms, Claren-
Norroy, soon after their investiture in office, usually re-
commission, under the great seal, authorizing them to visit
al counties within their respective provinces, to "peruse
knowledge, survey, and view of all manner of arms,
es, crests, and other like devices, with the notes of the
pedigrees, and marriages of all the nobility and gentry
hroughout contained; and also to reprove, control, and
amous by proclamation all such as shall unlawfully, and
ust authority, usurp or take any name or title of honour or
s esquire or gentleman," &c. From these visitations entries
rwards made in the books kept at the College of Heralds.

Voce, an examination by parol in open court.

VADIUM, *a living pledge, used* in opposition to a mortgage

or *dead pledge*, and is when a man borrows money and grants an estate to the lender to hold till the rents and profits repay the sum borrowed; in which case the pledge is said to be *living*, surviving to the borrower on the discharge of his debt.

Voire Dire. When a witness is suspected of partiality, he may, before he is examined, be sworn upon a *voire dire*, that is, to declare whether he shall gain or lose by the matter in controversy.

Vulgar Errors, erroneous notions prevalent among vulgar or ignorant people. It is a vulgar error that a funeral passing over private grounds creates a right of way. That it is lawful to arrest the dead body for debt. That first cousins may intermarry, but that second cousins may not; whereas they may both marry with each other. That persons born at sea have a right of settlement in Stepney parish. That a butcher cannot be sworn on a coroner's jury. That a lease for upwards of 99 years creates a freehold. That to disinherit a child, it is indispensable the sum of one shilling should be bequeathed. All these are popular errors, having no more validity in law than in reason.

W.

Wage, to give security or pledge for the performance of a specific act. *Wager of battle* is abolished by 59 G. 3, c. 46, and *wager of law* by 4 W. 4, c. 42.

Waiver, the passing over, or omitting to take advantage of, any right or claim.

Wapentake, the local term for hundred in the counties north of the Trent.

Ward has several significations. It ordinarily implies an infant under the protection of a guardian. The city of London is divided into *wards*, over each of which is an alderman, and a court pertains to each, called the *wardmote-court*. A forest is divided into wards, so is a prison. Lastly, the heir of the king's tenant that held *in capite*, was termed a ward during minority.

Warehouses of Goods. For the encouraging of British shipping, by making certain ports and towns of the kingdom entrepôts for merchandise, the lords of the Treasury are empowered to appoint warehousing or bonding places; and the commissioners of customs, under the direction of the Treasury, may appoint warehouses, or places of security, in which goods may be deposited without payment of duty, until such time as it suits the owners to remove them, either for exportation or home consumption; the warehouse-keeper or importer giving bond for the payment of the duties on the withdrawal of the goods. Goods are to be so warehoused as to leave easy access to every package and parcel; if the occupier of the warehouse omit to stow them, he forfeits £5 for

y omission, and is liable to pay the duties if he suffers them e taken away without entry. Goods fraudulently concealed or oved, forfeited, and any importer or proprietor fraudulently ing access to the warehouse, except in presence of the proper er, to forfeit £500. Goods entered to be warehoused, or re-ehoused, to be carried to warehouse under authority and direc-i of officer of customs. Goods not so carried to be forfeited. ds to be cleared, either for home use or exportation, within e years; ship stores within one; if not cleared, to be sold to ay rent and charges. The advantages of bonding warehouses ing been experienced, the privileges of such warehouses were ferred on Manchester by 7 & 8 V. c. 31. *See* also 13 & 14 V. 4.

Warrant, an authority or precept under the hand and seal of a tice, directed to a constable or other proper officer, requiring i to apprehend some person, search for stolen goods, or the . It may be issued in cases of treason, felony, præmunire, breaches of the peace. As a warrant deprives a person of his rty, a *summons* is the more suitable process in disputes on es and other minor charges. *Bench warrant* is a warrant ed for prompt execution by justices sitting on the bench, or in ion.

Warrant of Attorney, a power given by a client to his rney to appear and plead for him, or to suffer judgment to e against him by confessing the cause of action to be just.

Wassel-Bowl, a large silver bowl or cup in which the Saxons their entertainments, drank a health to one another, in the ase *waes-heal*; that is, "Health be to you."

Water-Bailiff, an officer in port towns employed in the ex-ning of ships and goods.

Watercourse, *see Rivers*. The right of taking water out of well or pond belonging to another person pertains to the class incorporeal hereditaments, and may be derived either from a nt or license from the original proprietor, or from prescription, ch presumes such concession.

Way. Right of way is a right to private road, or passage, ough another man's ground.

Ways and Means. When the House of Commons has voted upply, and settled the amount, it is usual to resolve into a mittee to consider the *ways and means* to raise the supply so ed.

Weighers, a class of custom-house officers whose duty is to nd and assist in the weighing of customable goods. They are ided into established, preferable, extra, and glut weighers. The blished and preferable weighers only have the power of making ures.

Welsh Mortgage. A mortgage in which no day is fixed for the ayment of the mortgage-money, but the mortgagee enjoyed the

profits of the land until the debt was paid, the mortgagor having a perpetual right of redemption.

WERE. Under the Anglo-Saxon laws the *were* was the legal value of a man's life, which varied according to his rank; and if human life was made to vary in value, it is no wonder that personal estimation should vary in the same way; thus the oath of a *twelvehynd man* was equal to the oath of six *ceorls*. Besides the were, there was a security afforded to the safety and peace of the house called the *mund*, and this, like the were, varied in amount with the rank of the party. Neither the *mildness* of the Anglo-Saxon laws, nor the principle of the were, seem to have extended to the case of *theft;* from the time of Athelstan, larceny to the value of twelve pence was capital, and very severe punishments were inflicted still earlier for smaller offences.

WHARF, a convenient place for the landing, warehousing, and shipping of goods. Natural ground on the banks of a canal, though used for the purpose of a wharf, is not a wharf; neither is the sea beach, *Rex* v. *Regent's Canal Company*. The term in its ordinary and legal import means a place built or constructed for the purpose of loading and unloading goods, and for the use of which wharfage or compensation is paid to the owner. *Sufferance wharfs* are certain privileged places on which goods are permitted to be landed in the custody of the custom-house till such time as the duties are paid or the goods bonded.

WHITE MEATS are milk, butter, cheese, eggs, and any compositions of them, which formerly were forbid in Lent, as well as flesh, until Henry VIII., by proclamation, A.D. 1543, allowed the eating of *white meats*.

WIDOW'S CHAMBER. A widow's apparel and the furniture of her bedroom is so called, and to which, by the custom of London, she is entitled on the death of her husband.

WIFE. The abduction, or taking a man's wife, either by fraud and persuasion or open violence, is an offence for which a remedy may be had, either by writ of ravishment or action of trespass. The husband is also entitled to recover damages in an action on the case against such as *persuade* or *entice* his wife to live separate from him without sufficient cause. The old law was so strict on this point, that if a man's wife missed her way on the road it was not lawful for another man to take her into his house, unless she were benighted, and in danger of being lost or drowned; but a stranger might carry her behind him on horseback to market, or to a justice of peace for a warrant against her husband.

WILLS have been already treated of, but it may here be added, as a matter of history in the law of property, that prior to the 32 H. 8, c. 7, there was no general testamentary power over freehold lands in England; but the power of willing personal property seems to have existed from the earliest period. Yet this power did not originally extend to the whole of a man's personal effects, but a

oods, after paying his debts and funeral expenses, were
› into three equal parts, one of which went to his children,
to his wife, and the third was at his own disposal. In
l, the right of bequest still continues restricted to personal
r, not extending to inheritable or real property, which com-
s lands, tenements, fixtures, and what are termed "heir-
vables." The Wills Act in England, 1 V. c. 26, has made
erty devisable, real and personal, and the jurisdiction per-
thereto has been since transferred from the ecclesiastical
› the Court of Probate.

NA-GEMOT, a convention or assembly of great men, in the
axon age, to advise and assist the king, and answerable to
iament.

DING. To constitute a wound, there must be a separation
hole skin; a separation of the cuticle only is not sufficient,
M'Loughlin, 8 *C. & P.* 635.

, in general, is the queen's precept in writing, issuing out
court to the sheriff, or other person, and commanding
ıg to be done touching a suit or action, or giving com-
to have it done.

OF RIGHT (now abolished), a judicial process to establish
to property against a possessory title, in which the de-
must allege some seisin of the lands and tenements to
or else in some person under whom he claims; and then
he right from the person so seised to himself. Except the
Toit v. *Bagwell*, in 1826, there are few examples in the
ury for prosecuting any real action for land by *writ of right*,
wise than by action of *trespass* or *ejectment*, which are the
›des of settling the title of lands.

Y.

the British standard measure of length. The length of
erial yard, as fixed by statute in 1824, is, compared with
ı pendulum vibrating seconds in the latitude of London, at
renheit, in a vacuum at the sea-level, in the proportion of
s to 39·1393 inches.

is a well-known period of time, consisting of 365 days;
gh in bissextile, or leap-year, it consists of 366, yet by
ł, the additional day in the leap-year, together with the
g day, shall be accounted for one day only. With few
ns, all Christian nations commence the year on the 1st of
; but as recently as 1752, even in England, the year did
ly commence till the 25th of March. In Scotland, at that
he year began on the 1st of January. This difference
reat practical inconvenience; and January, February, and
March often bore *two dates*, as is frequently found in old

records, as 1711-12. These inconsistencies, however, are removed by 24 G. 2, c. 23, which discontinues the Julian calendar, and introduces the New Style, by enacting that the 1st of January shall be reckoned the first day of the year, throwing out eleven days in that year, from the 2nd of September to the 13th, with a saving of ancient customs. Both *half-years* and *quarters* are usually divided according to certain feasts and holidays, rather than a precise division of days; as Lady Day, Midsummer Day, Michaelmas Day, and Christmas Day. In these cases, such divisions of the year by the parties are regarded by the law, and therefore, though a half-year's notice to quit is necessary to determine a tenancy from year to year, yet a notice served on the 29th of September, to quit on the 25th of March, being half a year's notice according to the above division, is good, though it contains less than one hundred and eighty-two, namely, one hundred and seventy-eight, days.

YEAR AND A DAY. A term that anciently determined a right, or worked a prescription in many legal cases.

YEW is derived from a Greek word "to hurt," and before the invention of guns, our ancestors made bows with this wood, for the annoyance of their enemies; and, therefore, took care to plant the trees in churchyards, whereby they might be better seen and preserved by the people.—*Blount.* But a more probable use for the churchyard yew is that it furnished green branches in imitation of palms, to be borne on Palm Sunday.

YORK, *custom of*, by which the widow of an intestate claimed one-third part of the effects of her deceased husband, after the payment of his debts.

YULE, in Scotland and the North of England, the term used by country people for Christmas. The author remembers the observance of the custom in Yorkshire, of laying a large log, called a *yule* log, on the fire on Christmas-eve, to burn through the night.

Z.

ZYTHUM. A drink made of corn, used by the ancient Gauls; so called from the seething or boiling it, whence cider had its name. *Cowel.*

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37 & 38 V. c. 37, amends the law as to appointments under powers not exclusive. It is dated the 30th of July, 1874, and provides (section 1), that no appointment which from and after the passing of the act shall be made in exercise of any power to appoint any property real or personal amongst several objects shall be invalid at law, or in equity, on the ground that any object of such power has been altogether excluded; but every such appointment shall be valid and effectual, notwithstanding that any one or more of the objects shall not thereby or in default of appointment take a share or shares of the property subject to such power.

ATTORNEYS AND SOLICITORS.

"The Attorney and Solicitors' Act, 1874" (37 & 38 V. c. 68), extends only to England and Wales. By section 4, 23 & 24 V. c. 127, section 10 (*vide supra*, p. 243), shall not henceforth apply to any person bound by articles who shall have obtained the sanction in writing of the attorney or solicitor to whom he is bound, and of one of the judges at *Westminster*, or of the Master of the Rolls,

or of one of the judges of the High Court of Justice, to be evidenced by an order of such judge. Not less than fourteen days' notice in writing of any application to a judge must be given beforehand to his registrar, such notice to state names and residences of the applicant and of the attorney or solicitor to whom he is bound, and the nature of the office or employment, and the time it is expected to occupy.

By section 7, fourteen days' notice (accompanied by affidavits) must be given to registrar of the court of application to strike the names of any attorney or solicitor off the roll of such court; and by section 12, any person wilfully and falsely pretending to act as an attorney or solicitor is liable to a penalty of £10 for each such offence; and any offence against the act may be prosecuted before a court of summary jurisdiction under the summary jurisdiction acts.

BETTING.

The act 37 V. c. 15, amends 16 & 17 V. c. 119 (*vide supra*, p. 676). The last-mentioned act is made applicable to Scotland, as well as the 37 V. c. 15. By section 3, where any letter, circular, telegram, placard, handbill, card, or advertisement is sent, exhibited, or published, whereby it is made to appear that any person, either in the United Kingdom or elsewhere, will on application give information or advice for the purpose of or with respect to any such bet or wager, or any such event or contingency as is mentioned in the act of 16 & 17 V., or will make on behalf of any other person any such bet or wager as is mentioned in the same act; or, with intent to induce any person to apply to any house, office, room, or place, or to any person, with the view of obtaining information or advice for the purpose of any such bet or wager, or with respect to any such event or contingency as is mentioned in the same act; or, inviting any person to make or take any share in or in connection with such bet or wager; every person sending, exhibiting, or publishing, or causing the same to be sent, exhibited, or published, shall be subject to the penalties provided in the seventh section of the same act with respect to offences under that section.

BOARD OF TRADE.—ARBITRATION.

"The Board of Trade Arbitration, &c., Act, 1874" (37 & 38 V. c. 40), is divided into two parts. Part I. amends the powers of the Board of Trade with respect to inquiries, arbitrations, and appointments, and other matters. Part II. amends "The Regulation of Railways' Act, 1873" (*vide supra*, p. 319), so far as regards the reference of differences to railway commissioners in lieu of arbitrators.

o Part I., by section 2, where, under the provisions of any act, the Board of Trade are required or authorized to n, approve, confirm, or determine anything, or to make der for the purposes of such special act, it may make such r as may be necessary for the purpose of complying with quisition.

re an inquiry is held by the Board of Trade for the pur- of this section, or in pursuance of any general or special recting or authorizing an inquiry, it may hold such inquiry person or persons duly authorized in that behalf by an f the Board.

ion 3 regulates the expenses connected with arbitration, n, &c.

o Part II., by section 6, where any difference to which a r company or canal company is a party is required or author- nder the provisions of any general or special act, to be de- ed by the Board of Trade, it may refer the matter for the n of the Railway Commissioners, and appoint them arbitra- · umpire, as the case may be, and thereupon the com- ners for the time being shall have the same powers as if the had been referred to their decision in pursuance of "The tion of Railways' Act, 1873," and also any further powers the Board of Trade would have had; this section not to o any case in which application is made to the Board of for the appointment of an umpire under the twenty-eighth of "The Lands Clauses Consolidation Act, 1845."

ection 7, the commissioners are to have the same power, by lecision, of varying any award previously made by any tor (including therein the Board of Trade) with reference same subject-matter as any arbitrator would have had if the ice had been referred to him.

BUILDING SOCIETIES.

e Building Societies' Act, 1874" (37 & 38 V. c. 42), repeals V. 4, c. 32 (*vide supra*, p. 357). But this repeal not ct any subsisting society certified under the earlier act, certificate of incorporation has been obtained. Provided ith regard to such subsisting societies as may not obtain ates of incorporation under this act, all things required to e by the barrister or advocate and the clerk of the peace e done by the registrar.

y society the rules of which have been certified under the d act shall be deemed to be a society under this act, and btain a certificate of incorporation, and thereupon shall a body corporate by its registered name. All transcripts of es of societies certified and enrolled under the repealed act

which are now filed with the rolls of the sessions of the peace shall, on a proper application, be taken off the file and transmitted to the registrar to be registered; and thereupon every such subsisting society shall be entitled to a certificate of incorporation.

Any number of persons may establish a society, under this act, for the purpose of raising by subscription a fund for making advances to members upon security of freehold, copyhold, or leasehold estate, by way of mortgage; and any such society shall, so far as is necessary, have power to hold land with the right of foreclosure, and to raise funds by the issue of shares of one or more denominations, either paid up in full or to be paid by periodical or other subscriptions, and with or without accumulating interest, and to repay such funds when no longer required. Provided, that any land to which any such society may become absolutely entitled by foreclosure, &c., shall as soon as practicable be sold or converted into money. The liability of any member of any society in respect of any share upon which no advance has been made shall be limited to the amount actually paid or in arrear on such share, and in respect of any share upon which an advance has been made shall be limited to the amount payable thereon under any mortgage or other security or under the rules of the society. Any society may receive deposits or loans, at interest, within the limits provided, from the members or other persons, or from corporate bodies, joint-stock companies, or from any terminating building society, to be applied to the purposes of the society.

In a permanent society the total amount so received on deposit or loan, and not repaid by the society, shall not at any time exceed two-thirds of the amount for the time being secured to the society by mortgages from its members.

In a terminating society the total amount so received and not repaid may either be a sum not exceeding such two-thirds as aforesaid, or a sum not exceeding twelve months' subscriptions on the shares for the time being in force.

Any deposits with or loans to a society, made before the commencement of this act, in accordance with its certified rules, to be valid, but no further deposits or loans to be received by such society, except within the limits provided hereby.

The rules of every society shall set forth the name of the society, the chief office or place of meeting for the business of the society: the manner in which the stock or funds of the society are to be raised, the terms upon which paid-up shares (if any) are to be issued and repaid, and whether preferential shares are to be issued, and, if so, within what limits, if any; and whether the society intends to avail itself of the borrowing powers contained in this act, and, if so, within what limits, not exceeding the limits prescribed by this act: the purposes to

which the funds of the society are to be applied, and the manner in which they are to be invested: the terms upon which shares may be withdrawn, and upon which mortgages may be redeemed: the manner of altering and rescinding the rules of the society, and of making additional rules: the manner of appointing, remunerating, and removing the board of directors or committee of management, auditors, and other officers: the manner of calling general and special meetings of the members: provision for an annual or more frequent audit of the accounts, and inspection by the auditors of the mortgages and other securities belonging to the society: whether disputes between the society and any of its members, or any person claiming by or through any member, or under the rules, shall be settled by reference to the court, or to the registrar, or to arbitration: provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof: provision for the custody of the mortgage deeds and other securities belonging to the society: the powers and duties of the board of directors or committee of management and other officers: the fines and forfeitures to be imposed on members of the society: the manner in which the society, whether terminating or permanent, shall be terminated or dissolved.

Sections 17 to 21 deal with the making, registering, and altering of rules of societies. By section 22, the name of a society may be changed (subject as therein mentioned) by a resolution of three-fourths of members present at a meeting. Sections 23 and 24 provide for the security to be given by officers, and for the method in which officers' accounts are to be rendered.

Section 25 provides for the investment of surplus funds, and for the appointment for that purpose of trustees. By section 26, when trustees are absent, registrars may order stock to be transferred. By sections 27 and 28, all rights of action and other rights, and all estates and interests in real and personal estate now belonging to or held in trust for any society certified under the repealed act, shall, on the incorporation of the society, vest in the society without any conveyance or assignment, except in the case of stocks and securities in the public funds, and estates in copyhold or customary hereditaments, the title to which cannot be transferred without admittance.

Where any society is entitled in equity to any hereditaments of copyhold or customary tenure by way of mortgage, the lord of the manor of which the same are held shall, if required, admit such persons, not more than three, as the society appoints, to be trustees on its behalf as tenants, on payment of the usual fines, fees, and other dues payable on the admission of a single tenant, or may admit the society as tenant in respect of the same, on payment of such special fine, or compensation in lieu of fine, and fees as may be agreed upon.

If any member of a society having in it a sum not exceeding £50 die intestate, then the amount due may be paid to the person who appears to be entitled under the Statute of Distributions, without taking out letters of administration, upon satisfactory evidence of death and a statutory declaration that the member died intestate, and that the person so claiming is so entitled; and in such case the society is not to be liable for payment to the wrong person, but the remedy is to be against the person who has received the money wrongfully. Section 30 provides for the payment of any sum, not exceeding £150, to the administrator of any deceased member who may have died intestate and have left an infant heir, and who may have mortgaged any property to the society, after the sale of the mortgaged premises and the deduction of the amount due to the society.

By section 33, societies may unite with others, or one society may transfer its engagements to another. Section 34 deals with the determination of disputes by arbitration, and empowers the court to enforce arbitrators' decisions.

Buildings and land for the purpose of building may be purchased by a society for conducting its business. Minors may be elected members, but are not to vote. Shares may be held by two or more persons. Societies are to make annual audits and statements of the funds to the members. No rules, &c., nor any instrument or document whatever required or authorized to be given, issued, signed, made, or produced in pursuance of this act, or of the rules of the society (except a mortgage), shall be liable to stamp duty (section 41).

By section 42, a receipt indorsed on a mortgage deed is to be sufficient discharge without reconveyance, and the estate is to become revested in the mortgagor.

By section 44, a Secretary of State may make regulations respecting the fees, if any, to be paid for the transmission, registration, and inspection of documents under this act, and generally for carrying this act into effect.

CONTRACTS.

See INFANTS.

ENDOWED SCHOOLS.

"The Endowed Schools' Act, 1874" (37 & 38 V. c. 87), amends 32 & 33 V. c. 56 (*vide supra*, p. 118), by repealing the first paragraph of section 52, and the whole of sections 31, 48, and 59. By section 1, the powers and duties of the Endowed School Commissioners are transferred to the Charity Commissioners. By section 2, the Crown may appoint one or two persons to be paid Charity Com-

missioners for England and Wales, and a person to be secretary in addition to the three paid Charity Commissioners, and secretary capable of being appointed under the Charitable Trusts' Acts, 1853 to 1869. The two additional commissioners and additional secretary shall hold office during the Crown's pleasure, and their salaries shall cease to be paid after the 31st of December, 1879.

The Treasury may allow the Charity Commissioners to employ such number of assistant commissioners, officers, and clerks as may be necessary to enable the commissioners to perform the additional duties imposed upon them.

FACTORY ACT, 1874.

37 and 38 V. c. 44, amends the Factory Acts (*vide supra*, pp. 361–363). By section 20, the act applies to a factory as defined by the Factory Acts, 1833–56, and to a lace factory as defined by "The Lace Factory Act, 1861." By s. 3, a child, young person, or woman may be employed in a factory between 6.0 A.M. and 6.0 P.M., or between 7.0 A.M. and 7.0 P.M., but may not be employed continuously for more than four hours and a half without an interval of at least half an hour for a meal. Two hours shall also be allowed on every day but Saturday, during the time for employment, for meals, one hour to be before 3.0 P.M. On Saturday, where the hours of employment are from 6.0 to 6.0, if not less than one hour is allowed for meals on that day, employment for any manufacturing purpose is to cease at 1.0 P.M., or for any purpose at 1.30 P.M., and if less than one hour is allowed for meals, employment for any manufacturing purpose is to cease at 12.30 P.M., or for any purpose at 1.0 P.M. And where the hours of employment are from 7.0 to 7.0, employment for any manufacturing purpose is to cease on Saturdays at 1.30 P.M., of for any purpose at 2.0 P.M. Children may be employed either in morning or afternoon sets or for the whole day on alternate days. In the former case, a child who is employed before noon on any day except Saturday is not to be employed after 1.0 P.M., or if dinner be before 1.0, after dinner, nor is a child to be employed on two consecutive Saturdays, nor at all on Saturday if he has been employed for more than five hours on any other day in the same week, and he is to attend school as directed by section 38 of "The Factory Act, 1844."

In the latter case (of alternate days), no child is to be employed in any manner on two consecutive days, and a child is to attend school in manner directed by section 31 of "The Factory Act, 1844."

The hours of meals for children, young persons, and women are to be simultaneous, unless some alteration for a special cause be allowed in writing by an inspector. After the 1st of January, 1876, no child, young person, or woman is to be employed in recovery of *lost time under 7 and 8 V. c. 15. secs. 33 & 34.*

The act is not to apply to youths employed in lace factories in manner provided by section 2 of "The Lace Factory Act," 1861, except that where the period of employment is from 7.0 to 7.0, those hours are to be substituted in the same section for the hours of 6.0 to 6.0.

After the 1st of January, 1876, the age of a child under the Factory Acts is extended to fourteen years, unless an educational certificate should be obtained. No child is to be employed during 1875 if under nine years of age, nor afterwards if under ten.

The enactments of "The Factory Act, 1850," authorizing the employment of children in the silk manufacture during longer hours than in other manufactures are repealed, but any child may be employed in the winding and throwing of raw silk, if between eleven and twelve years of age for one year, and if between twelve and thirteen for two years after the passing of this act.

HOSIERY MANUFACTORY.

By "The Hosiery Manufacture (Wages) Act, 1874" (37 & 38 V. c. 48), all contracts to stop wages, and all contracts for frame rents and charges, between employer and artificers, are declared to be illegal, null, and void.

If any employer shall bargain to deduct, or shall deduct, directly or indirectly, from the wages of any artificer in his employ any part of such wages, or shall not pay in the current coin of the realm, he shall forfeit a sum of five pounds for every offence, to be recovered by the said artificer, or any other person suing for the same, in the county court in the district where the offence is committed, with full costs of suit.

If any frame or machine entrusted to any artificer or other person by his employer for the purpose of being used in his hosiery manufacture be worked without the consent in writing of such employer for any other person, then the person to whom the same is entrusted shall forfeit and pay ten shillings for every day on which any such frame or machine has been so worked, recoverable in the county court of the district with full costs.

INFANTS' CONTRACTS.

By "The Infants' Relief Act, 1874" (37 & 38 V. c. 62), all contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessaries), and all accounts stated with infants, shall be abso-

lutely void. This enactment is not to invalidate any contract into which an infant may, by any existing or future statute, or by the rules of common law or equity, enter, except such as now by law are voidable. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

JUDICATURE ACT.

By 37 & 38 V. c. 83, it is provided that "The Supreme Court of Judicature Act, 1873" (*vide supra*, p. 105), except any provision taking effect on the passing of the act, shall come into operation on the 1st of November, 1875, instead of on the 1st of November, 1874.

[The rules under "The Judicature Act, 1873," have been prepared, but as it is intended to introduce a further amending bill next session, and as, therefore, the rules will most likely be revised before Parliament approves of them, they are not referred to in the present edition.]

LICENSING.

"The Licensing Act, 1874" (37 & 38 V. c. 49), amends "The Licensing Act, 1872" (*vide supra*, pp. 292–302). By section 3, all premises in which intoxicating liquors are sold by retail shall be closed as follows :—

1. If situate within the metropolitan district, on Saturday night from midnight until one o'clock in the afternoon on the following Sunday, and on Sunday night from eleven o'clock until five o'clock on the following morning ; and on all other days, from half an hour after midnight until five o'clock on the same morning.

2. If situate beyond the metropolitan district, or in a town or in a populous place as defined by this act, on Saturday night from eleven o'clock until half an hour after noon on the following Sunday, and on Sunday night from ten o'clock until six o'clock on the following morning, and on the nights of all other days from eleven o'clock until six o'clock on the following morning.

3. If situate elsewhere than as above, on Saturday night from ten o'clock until half an hour after noon on the following Sunday, and on Sunday night from ten o'clock until six o'clock on the following morning, and on the nights of all other days from ten o'clock until six o'clock on the following morning.

Such premises, wherever situate, shall, save as hereinafter mentioned, *be closed on Sunday* afternoon from three or half-past two,

according as the hour of opening shall be one o'clock in the afternoon or half an hour after noon, until six o'clock; and shall be closed on Christmas-day and Good Friday, and on the days preceding Christmas-day and Good Friday respectively, as if Christmas-day and Good Friday were respectively Sunday and the preceding days were respectively Saturday; but this provision shall not alter the hours during which such premises shall be closed on Sunday when Christmas-day immediately precedes or succeeds Sunday.

By section 4, the exemption as to premises in the neighbourhood of theatres is repealed, and by section 5 power is given to licensing justices to vary the hours of closing premises beyond the metropolitan district for the sale of intoxicating liquors on Sunday, Christmas-day, and Good Friday afternoons.

By section 7, an applicant for a new licence can obtain one with a condition inserted that he is to close his premises an hour earlier at night than he would otherwise have to do, and he is entitled thereupon to obtain his licence from the Commissioners of Inland Revenue upon payment of six-sevenths of the duty otherwise payable. By section 8, a person who takes out a six-days' licence is entitled to a remission of two-sevenths of the duty.

Section 9 inflicts a penalty, not exceeding ten pounds for the first and twenty pounds for any subsequent offence, on any person infringing the act as to hours of closing. Liquor may (section 10) be sold to any one lodging in the house, and to a bonâ fide traveller, at any time. A bonâ fide traveller is defined to mean a person who lodged the preceding night at least three miles from where he demands liquor. Section 14 provides that a record of conviction for adulteration may be recorded on license. A constable may (section 16) enter on any premises in order to enforce the act. And by section 17 a justice of the peace may grant a search-warrant for the detection of liquors sold or kept contrary to law, and in certain cases the liquor may be seized and forfeited. Any constable who acts in pursuance of such warrant may demand the name and address of any one found on the premises from which any liquor is taken, and in default may take him into custody and carry him before a justice of the peace. Penalty for refusing to give name and address, five pounds. No person (section 30) is to be liable for supplying liquor to private friends without charge.

LIMITATION OF ACTIONS.

By "The Real Property Limitation Act, 1874" (37 & 38 V. c. 57), which comes into operation in 1879, no land or rent can be recovered but within twelve years after the right of action has accrued. By section 2, a right to make an entry or distress, or to bring an action or suit to recover any land or rent, shall be deemed to have first accrued in respect of an estate or interest in reve-

sion or remainder, or other future estate or interest at the time at which the same shall have become an estate or interest in possession by the determination of any estate in respect of which such lands shall have been held, or the profits thereof or such rent shall have been received, notwithstanding the person claiming such land or rent or some person through whom he claims shall at any time previously to the creation of the estate or estates which shall have determined have been in the possession or receipt of the profits of such land or in receipt of such rent. But if the person last entitled to any particular estate on which any future estate or interest was expectant shall not have been in the possession or receipt of the profits of such land or in receipt of such rent at the time when his interest determined, no such entry or distress shall be made, and no such action or suit shall be brought by any person becoming entitled in possession to a future estate or interest but within twelve years next after the time when the right to make an entry or distress or to bring an action or suit for the recovery of such land or rent shall have first accrued to the person whose interest shall have so determined, or within six years next after the time when the estate of the person becoming entitled in possession shall have become vested in possession; and if the right of any such person to make such entry or distress, or to bring any such action or suit, shall have been barred under this act, no person afterwards claiming to be entitled to the same land or rent in respect of any subsequent estate or interest under any deed, will, or settlement executed or taking effect after the time when a right to make an entry or distress, or to bring an action or suit for the recovery of such land or rent, shall have first accrued to the owner of the particular estate whose interest shall have so determined as aforesaid, shall make any such entry or distress, or bring any such action or suit to recover such land or rent. And by section 3, in cases of infancy, coverture, or lunacy at the time when the right of action accrues, six years is to be allowed from the termination of the disability or previous death. And by section 4, no time is to be allowed for absence beyond seas. By section 5, thirty years is to be the utmost allowance for disability. By section 6, in case of possession under an assurance by a tenant in tail which shall not bar the remainders, they shall be barred at the end of twelve years after that period at which the assurance, if then executed, would have barred them. By section 7, mortgagor is to be barred at the end of twelve years from the time when the mortgagee took possession, or from the last written acknowledgment. By section 8, money charged upon land and legacies are to be deemed to be satisfied at the end of twelve years if no interest has been paid nor acknowledgment given in writing in the meantime. And by section 10, the time for recovering charges and arrears of interest is not to be enlarged by express trusts for raising the same.

MARRIED WOMEN'S PROPERTY.

By "The Married Women's Property Amendment Act" (37 & 38 V. c. 50), the act of 1870 (vide supra, p. 433) is amended. A husband and wife may be jointly sued for a wife's debts incurred before marriage, where the marriage has taken place after the 30th of July, 1874. The husband is, however, only liable to the extent of the value of the personal estate in possession, or choses in action reduced into possession, or chattels real, or the net annual profits of real estate received by husband belonging to the wife, and to the extent of the value of the husband's interest in any property (real or personal) transferred by the wife in contemplation of marriage to him or to any other person, or transferred with his consent to any person with a view to defeat her existing creditors.

PERSONATION.

The False Personation Act, 1874" (37 & 38 V. c. 36), declares that if any one falsely personates any person, or the heir, executor, administrator, wife, widow, next of kin, or relation of any person, with intent fraudulently to obtain any land, money, or property, he is guilty of felony, and liable to penal servitude for life, or for not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour and solitary confinement. Offences against this act not to be tried at quarter sessions.

PUBLIC HEALTH.

See Factory Act, 1874.

PUBLIC WORSHIP REGULATION.

By 37 & 38 V. c. 85, provision is made for the better administration of the laws respecting public worship. The act extends only to England, the Channel Isles, and the Isle of Man, and comes into operation on the 1st of July, 1875. Proceedings under the act are not to be deemed proceedings under 3 & 4 V. c. 86, section 23. No jurisdiction in force for the due administration of ecclesiastical law is to be repealed by the act.

By sect. 7, the Archbishop of Canterbury and the Archbishop of York may, but subject to the approval of Her Majesty, to be signified under her sign manual, appoint a barrister-at-law in actual practice for ten years, or a judge of one of the superior courts of law or equity, to be, during good behaviour, a judge of the provincial courts of Canterbury and York.

If the said archbishops shall not, within six months after the passing of this act, or within six months after the occurrence of any vacancy in the office, appoint the said judge, Her Majesty may by letters patent appoint some qualified person to be such judge.

Whenever a vacancy occurs in the office of official principal of the Arches Court of Canterbury, the judge shall become *ex officio* such official principal, and all proceedings taken before the judge in relation to matters arising within the province of Canterbury shall be deemed to be taken in the Arches Court of Canterbury; and whenever a vacancy shall occur in the office of official principal or auditor of the Chancery Court of York, the judge shall become *ex officio* such official principal or auditor, and all proceedings taken before the judge in relation to matters arising within the province of York shall be deemed to be taken in the Chancery Court of York; and whenever a vacancy shall occur in the office of Master of the Faculties to the Archbishop of Canterbury, such judge shall become *ex officio* such Master of the Faculties.

Every person appointed to be a judge under this act shall be a member of the Church of England, and shall, before entering on his office, sign the declaration in Schedule A. to this act; and if at any time any such judge shall cease to be a member of the Church, his office shall thereupon be vacant.

This section (7) shall come into operation immediately after the passing of this act.

If the archdeacon of the archdeaconry, or a churchwarden of the parish, or any three parishioners of the parish, within which archdeaconry or parish any church or burial ground is situate, or for the use of any part of which any burial ground is legally provided, or in case of cathedral or collegiate churches, any three inhabitants of the diocese, being male persons of full age, who have signed and transmitted to the bishop under their hands the declaration contained in Schedule A. under this act, and who have, and for one year next before taking any proceeding under this act have had, their usual place of abode in the diocese within which the cathedral or collegiate church is situated, shall be of opinion that in such church any alteration in or addition to the fabric, ornaments, or furniture thereof has been made without lawful authority, or that any decoration forbidden by law has been introduced into such church; or, that the incumbent has within the preceding twelve months used or permitted to be used in such church or burial ground any unlawful ornament of the minister of the church, or neglected to use any prescribed ornament or vesture; or, that the incumbent has within the preceding twelve months failed to observe, or to cause to be observed, the directions contained in the Book of Common Prayer relating to the performance, in such church or burial ground, of the services, rites, and *ceremonies* ordered by the said book, or has made or

permitted to be made any unlawful addition to, alteration of, or omission from such services, rites, and ceremonies, such archdeacon, churchwarden, parishioners, or such inhabitants of the diocese, may represent the same to the bishop, by sending to the bishop a form, as contained in Schedule B. to this act, duly filled up and signed, and accompanied by a declaration made by him or them under the act of 5 & 6 W. 4, c. 62, affirming the truth of the statements contained in the representation. Provided that no proceedings shall be taken as regards any alteration in the fabric of a church if such alteration has been completed five years before the commencement of such proceedings. Unless the bishop shall be of opinion, after considering the whole circumstances of the case, that proceedings should not be taken, he shall, within twenty-one days after receiving the representation, transmit a copy to the person complained of, and shall require such person, and also the person making the representation, to state in writing within twenty-one days whether they are willing to submit to the directions of the bishop touching the matter of the said representation without appeal; and if they shall state their willingness to submit to the directions of the bishop without appeal, the bishop shall forthwith proceed to hear the matter of the representation in such manner as he shall think fit, and shall pronounce such judgment and issue such monition as he may think proper, and no appeal shall lie. Provided that no judgment so pronounced by the bishop shall be considered as finally deciding any question of law so that it may not be again raised by other parties.

The parties may, at any time after the making of a representation to the bishop, join in stating any questions arising in such proceedings in a special case signed by a barrister-at-law for the opinion of the judge, and the parties, after signing and transmitting the same to the bishop, may require it to be transmitted to the judge for hearing, and the judge shall hear and determine the question or questions arising thereon, and any judgment pronounced by the bishop shall be in conformity with such determination. If the person making the representation and the person complained of shall not state their willingness to submit to the directions of the bishop, the bishop shall forthwith transmit the representation in the mode prescribed by the rules and orders to the archbishop of the province, and the archbishop shall forthwith require the judge to hear the matter of the representation at any place within the diocese or province, or in London or Westminster. The judge shall give not less than twenty-eight days' notice to the parties of the time and place at which he will proceed to hear the matter of the said representation, and security for costs shall be required. The person complained of shall, within twenty-one days after such notice, transmit to the judge, and to the person making the representation, a succinct answer to the representation, and in default of such answer he

shall be deemed to have denied the truth or relevancy of the representation. In all proceedings before the judge, the evidence shall be given *vivâ voce*, in open court, and upon oath; and the judge shall have the powers of a court of record, and may enforce the attendance of witnesses, and the production of evidences, in the like manner as a judge of one of the superior courts of law or equity.

Unless the parties shall both agree that the evidence shall be taken down by a shorthand writer, and that a special case shall not be stated, the judge shall state the facts proved before him in the form of a special case, similar to a special case stated under the Common Law Procedure Acts, 1852–1854.

The judge shall pronounce judgment on the matter of the representation, and shall deliver to the parties, on application, and to the bishop, a copy of the special case and judgment.

The judge shall issue such monition and make such order as to costs as the judgment shall require.

An appeal is to lie to Her Majesty in council.

Obedience by an incumbent to a monition or order shall be enforced in the manner prescribed by rules and orders, by an order inhibiting the incumbent from performing any service of the church, or otherwise exercising the cure of souls within the diocese, for a term not exceeding three months; provided that at the expiration of such term the inhibition shall not be relaxed until the incumbent shall, by writing under his hand, in the form prescribed by the rules and orders, undertake to pay due obedience to such monition or order; provided that if such inhibition shall remain in force for more than three years, or if a second inhibition in regard to the same monition shall be issued within three years from the relaxation of an inhibition, any benefice or other ecclesiastical preferment held by the incumbent in the parish in which the church or burial ground is situate, or for the use of which the burial ground is legally provided, in relation to which church or burial ground such monition has been issued as aforesaid, shall thereupon become void, unless the bishop shall, for some special reason stated by him in writing, postpone for a period not exceeding three months the date at which, unless such inhibition be relaxed, such benefice or other ecclesiastical preferment shall become void, and upon any such avoidance it shall be lawful for the patron of such benefice or other ecclesiastical preferment to appoint or nominate to the same as if such incumbent were dead; and the provisions contained in the act of 1 & 2 V. c. 106, section 58, in reference to notice to the patron, and as to lapse, shall be applicable to any benefice or other ecclesiastical preferment so avoided; and it shall not be lawful for the patron at any time to appoint or nominate to such benefice or such other ecclesiastical preferment the incumbent by whom the same was voided.

The bishop may, during such inhibition, unless he is satisfied

that due provision is otherwise made for the spiritual charge of the parish, make due provision for the service of the church and the cure of souls, and raise the sum required from time to time for such provision by sequestration of the profits of such benefice or other ecclesiastical preferment.

When a sentence has been pronounced by consent, or any suit or proceeding has been commenced against any incumbent under the act of 3 & 4 V. c. 86, he shall not be liable to proceedings under this act in respect of the same matter; and no incumbent proceeded against under this act shall be liable to proceedings under the said act of 3 & 4 V. in respect of any matter upon which judgment has been pronounced under this act.

Her Majesty may by order in council determine rules for settling procedure and fees under this act.

SCHEDULE (A.)

I do hereby solemnly declare that I am a member of the Church of England as by law established.

Witness my hand this day of

SCHEDULE (B.)

"Public Worship Regulation Act, 1874."

To the Right Rev. Father in God, *A.*, by Divine permission Lord Bishop of *B.*

I. [We] *C.D.*, archdeacon of the archdeaconry of [*or* a churchwarden *or* three parishioners of the parish of *E.*,] in your Lordship's diocese, do hereby represent that [*the person or persons complained of*] has *or* have [*state the matter to be represented; if more than one, then under separate heads*].

Dated this day of 18 .

(Signed) *C.D.*

RATING.

By "The Rating Act, 1874" (37 & 38 V. c. 54), the law respecting liability of certain property to pay rates is amended, and the poor-rate acts are extended to land used for a plantation or wood, or for the growth of underwood, not being common, and to rights of shooting and fishing when severed from the occupation, and to mines of every kind. If land is used for a plantation, its value is to be estimated as if it were let or occupied in its unimproved state; if for the growth of underwood, as if it were let for

that purpose; if for both, as the assessment committee may determine. The right of sporting is not to be separately rated if severed from the occupation and not let, but if let either the owner or lessee may be rated.

The rateable annual value of tin, lead, and copper mines is to be the same as the gross value when occupied under a lease without fine; but when occupied by owner, or under a lease with fine, the rateable value is to be taken as the annual amount of the rent at which the mine might be let without a fine, if tenant undertook to pay usual rates and to keep in repair, &c., and to insure. A tenant of a mine may deduct rate from his rent to the extent of one-half.

The property to which the poor-rate acts are extended by this act is to be rateable to all local rates.

REGISTRATION OF BIRTHS AND DEATHS.

"The Births and Deaths Registration Act, 1874" (37 & 38 V. c. 88), provides that information concerning the birth of a child must be given to registrar within forty-two days, and in default of such information the registrar may require persons to attend personally at his office and give such information. Any person finding a new-born child exposed must forthwith also give information. The registrar must ascertain and register birth gratis. After the expiration of three months from the birth, the registrar cannot register except after obtaining a solemn declaration as in section 5 provided, and after twelve months no birth shall be registered without the written authority of the Registrar-General. Penalty for registration in contravention, ten pounds.

The name of the father of an illegitimate child is not to be registered except at the joint request of the father and mother of the child, and both the father and mother shall in such case sign the register. Death and cause of death are also to be registered, and where deceased dies not in a house, information of the facts is to be registered. The registrar may demand information from a qualified informant, and must register death gratis, but no death to be registered twelve months after it has taken place without the written authority of the Registrar-General.

A coroner's order, if an inquest has been held, and a registrar's certificate must be obtained before the burial of any body, and must be handed over to the person who buries, or who performs a religious rite at burial. No deceased child shall be buried as if still-born.

SANITARY ACT.

"The Sanitary Law Amendment Act, 1874" (37 & 38 V. c. 89), amends 35 & 36 V. c. 79 (*vide supra*, p. 665). The rural sanitary authority *and board of guardians* are declared to be the same

authority. The transfer of powers of sanitary authorities under section 7 of 35 & 36 V. c. 79, applies to authorities under local acts. Provisional orders (under section 33 of same act) of the Local Government Board may extend the provisions of any local act beyond the boundaries of the district comprised therein, or diminish the area to which such local act may apply, and section 39 of 35 & 36 V. is extended to adjustment of accounts.

An order against a defaulting sanitary authority may be enforced by mandamus. It is made the duty of an urban authority, upon the direction of the Local Government Board, to cleanse streets, privies, and ash-pits, subject to a penalty on summary conviction of five shillings a day payable to occupier of a house where ash-pit, &c., shall not be cleansed. By section 50, provision is made for closing wells and pumps which are found to contain polluted water, upon the order of justices in petty sessions, and water may also be analyzed at the expense of the sanitary authority applying upon the order of justices. Sections 51 and 52 of 35 & 36 V. c. 79, are extended to the metropolis, and the right of complaint under the Nuisance Removals Act is extended to any parish or place, public or private, and may be exercised by an inhabitant or owner.

SETTLED ESTATES.

By the "Leases and Sales of Settled Estates Amendment Act, 1874" (37 & 38 V. c. 33), notice may be given to persons interested in a settled estate (an application of a lease or sale of any part of which has been made under 19 & 20 V. c. 120), and who do not concur in the application requiring them to notify their assent or dissent within a time limited in such notice. The Court of Chancery is also empowered to dispense with the consent of any such person when making an order upon any such application, having regard to the numbers and interests of the parties.

VENDORS AND PURCHASERS.

By the act 37 & 38 V. c. 78, the title of land is attempted to be further simplified. The act came into force on the 7th of August, 1874. Forty years is (subject to any stipulation to the contrary) substituted for sixty years as the root of title. And by section 2, the rights of vendors and purchasers are regulated as follows, subject to any stipulation to the contrary.

Under a contract to grant or assign a term of years out of a freehold or leasehold estate, the lessee or assign is not to be entitled to call for the title to the freehold. Recitals, statements, and descriptions of facts, &c., contained in instruments twenty

years old, except so far as proved to be inaccurate, are to be taken as sufficient evidence of their truth.

The inability of the vendor to furnish the purchaser with a legal covenant to produce and furnish copies of documents of title is not to be an objection to title in case the purchaser, on the completion of the contract, have an equitable right to the production of such documents. Such covenants for production as the purchaser requires are to be furnished at his expense, and the vendor is to bear the expense of perusal and execution on behalf of himself, and of necessary parties other than the purchaser. Where the vendor retains any part of an estate to which any documents of title relate, he is to be entitled to retain such documents. Trustees who are either vendors or purchasers may sell or buy without excluding the application of section 2 of this act.

The legal personal representative of a mortgagee of a freehold estate, or of a copyhold estate to which the mortgagee shall have been admitted, may, on payment of all sums secured by the mortgage, convey or surrender the mortgaged estate, whether the mortgage be in form an assurance subject to redemption, or an assurance upon trust. Upon the death of a bare trustee of any corporeal or incorporeal hereditament of which such trustee was seised in fee simple, such hereditament shall vest like a chattel real in the legal personal representative from time to time of such trustee.

When any freehold or copyhold hereditament shall be vested in a married woman as a bare trustee, she may convey or surrender the same as if she were a feme sole. No priority or protection shall be given or allowed to any estate, right, or interest in land by reason of such estate, right, or interest being protected by or tacked to any legal or other estate or interest in such land; and full effect shall be given in every court to this provision, although the person claiming such priority or protection shall claim as a purchaser for valuable consideration and without notice: Provided that this section shall not take away any priority or protection which existed before.

Where the will of a testator devising land in Middlesex or Yorkshire has not been registered within the period allowed by law, an assurance to a purchaser or mortgagee by the devisee or by some one deriving title under him shall, if registered before, take precedence of any assurance from the testator's heir-at-law.

A vendor or purchaser of real or leasehold estate in England, or their representatives, may apply in a summary way to a judge of the Court of Chancery in chambers, in respect of any question connected with the contract (not being a question affecting the existence or validity of the contract).

CORRIGENDA AND ADDENDA.

On p. 247, 17 lines from foot, the act referred to should be "31 & 32 V. c. 121," not "31 & 32 V. c. 12," and on the same page strike out the words, "apprentices and assistants must also be registered," occurring on lines 11 and 12 from the foot, and add the words "by section 4 of the act, any person being of full age who produces to the registrar certificates that he had been for a period of not less than three years actually engaged in the dispensing and compounding of prescriptions as an assistant to a pharmaceutical chemist, or to a chemist and druggist as defined, may, on passing such modified examination as the council of the Pharmaceutical Society, with the consent of the Privy Council, may consider sufficient evidence of his skill and competency to conduct the business of a chemist and druggist, be registered as a chemist and druggist."

On p. 272, strike out the words "and any amount of damage obtained will carry costs, Cooke v. Anderson," occurring on lines 27 and 28 from top.

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THE

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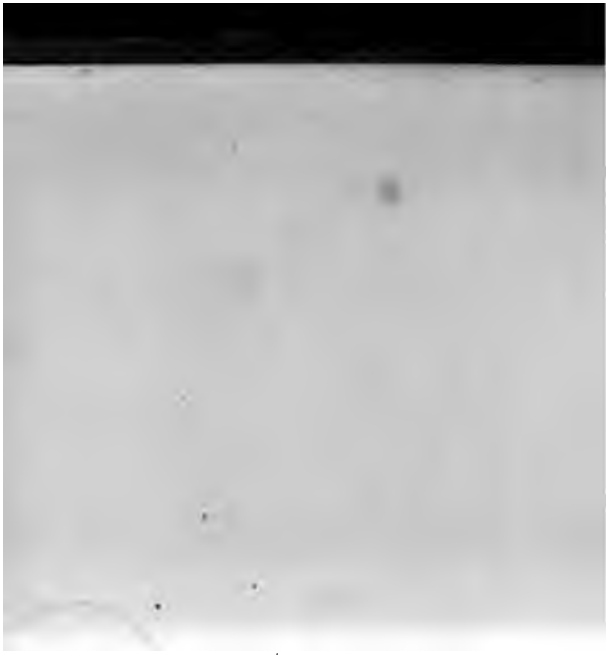
I wish every man knew as much law as would enable him to keep out of it."—LORD BACON.

LONDON:

LONGMANS, GREEN, READER, AND DYER.

1876.



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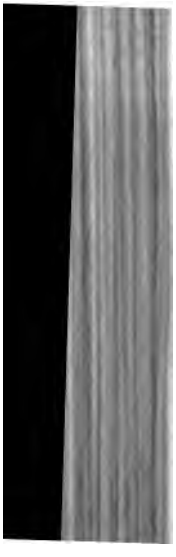

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SUPPLEMENT.

ACTS OF THE SESSION OF 1875,

(38 & 39 VICT.),

ALPHABETICALLY ARRANGED.

ADULTERATION OF FOOD.

See SALE OF FOOD AND DRUGS.

AGRICULTURAL HOLDINGS.

"The Agricultural Holdings (England) Act, 1875" (38 & 39 V. c. 92), commences on the 14th of February, 1876. Section 4 interprets the terms made use of in the act. By section 5, where, after the commencement of this act, a tenant executes on his holding an improvement comprised in either of the three classes following:

FIRST CLASS.

Drainage of land.	Making or improving of roads or bridges.
Erection or enlargement of buildings.	Making or improving of watercourses, ponds, wells, or reservoirs, or of works for supply of water for agricultural or domestic purposes.
Laying down of permanent pasture.	Making of fences.
Making and planting of osier beds.	Planting of hops.
Making of water meadows or works of irrigation.	Planting of orchards.
Making of gardens.	Reclaiming of waste land.
	Warping of land.

SECOND CLASS.

Boning of land with undissolved bones.	Claying of land.
Chalking of land.	Liming of land.
Clay-burning.	Marling of land.

THIRD CLASS.

Application to land of purchased artificial or other purchased manure.	Consumption on the holding by cattle, sheep, or pigs of cake or other feeding stuff not produced on the holding.

he is to be entitled to obtain, on the determination of the tenancy, compensation in respect of the improvement. By section 6, no improvement is to be deemed to continue unexhausted beyond twenty years for first class, seven for second, and two for third. By section 7, the amount of the tenant's compensation in respect of an improvement of the first and second class is to be the sum laid out on the improvement, with a deduction of a proportionate part for each year during the tenancy after the outlay is made and while the improvement continues unexhausted; but as regards the first class (the landlord at the time of consent not being absolute owner) the amount of the compensation is not to exceed a capital sum fairly representing the addition which the improvement, at the determination of the tenancy, makes to the letting value of the holding.

The amount of the tenant's compensation for an improvement of the third class is (by section 9) to be such proportion of the sum laid out by the tenant as fairly represents the value of the improvement at the end of the tenancy to an incoming tenant. By section 10, no compensation need be paid in respect of an improvement of the first class, unless the consent of the landlord in writing has previously been procured. By section 11, any sum necessary for repairing any improvement of the first class shall be deducted from the amount of the compensation. By section 12, no tenant is to be entitled to compensation in respect of a second class improvement, unless, not more than forty-two and not less than seven days before beginning to execute it, he has given to the landlord notice in writing of his intention to do so, nor where it is executed after the tenant has given or received notice to quit,

unless it is executed with the previous consent in writing of the landlord. By section 13, no tenant is to be entitled to compensation in respect of an improvement of the third class, where after the execution thereof, there has been taken from the portion of the holding on which the improvement was made—a crop of corn, potatoes, hay, or seed, or any other exhausting crop. By section 14, compensation in respect of a third class improvement consisting of the consumption of cake, or other feeding stuff, where, under the custom of the county, or an agreement, he is entitled to and claims payment from the landlord, or incoming tenant, in respect of the additional value given by such consumption to the manure. By section 15, as regards improvement of the third class, no larger outlay shall be taken into account during the last year of the tenancy than the average amount of the tenant's outlay for like purposes during the three next preceding years of the tenancy, or other less number of years for which the tenancy has endured; and, there shall be deducted the value of the manure that would have been produced by the consumption on the holding of any hay, straw, roots, or green crops sold off the holding within the last two years of the tenancy, or other less time for which the tenancy may have endured, except where a proper return of manure in respect of produce sold, has been made. By section 16, deductions from compensation are to be made for taxes, rates, and tithe rent-charges, in respect of the holding to which the tenant is liable, and for rent due in respect of the holding and for the landlord's compensation under the act. By section 17, any benefit to the tenant by the landlord in consideration of the tenant's executing the improvement, may be set off. By section 18, a tenant claiming compensation under this act can claim compensation for any breach of covenant by his landlord; and by section 19, a landlord can obtain compensation from a tenant in respect of a breach of contract, or of waste being permitted by way of counter-claim to be set off against a tenant's claim for compensation; but no landlord is thus enabled to obtain compensation under this act in respect of waste, or a breach of covenant committed in relation to a matter of husbandry, more than four years before the expiration of the tenancy. By section 20, one month before the determination of the tenancy the tenant must give his landlord notice in writing of his intention to make a claim for compensation, and on receipt of such notice the landlord may within 14 days give a counter-notice in writing to his tenant of his intention to claim compensation. Every such notice and counter-notice shall state the particulars of the intended claim. The landlord and tenant may agree on the amount, mode, and time of payment of compensation, and if in any case they do not agree the difference shall be settled by a reference.

Sections 22 to 35 deal with the appointment and powers of referees and *umpires*.

If the parties concur there may be a single referee appointed by them jointly: If before award the single referee dies or becomes incapable of acting, or for seven days after notice from the parties, or either of them, requiring him to act, fails to act, the proceedings shall begin afresh, as if no referee had been appointed. If the parties do not concur in the appointment of a single referee, each of them shall appoint a referee. If before award one of two referees dies or becomes incapable of acting, or for seven days after notice from either party requiring him to act fails to act, the party appointing him shall appoint another referee. Notice of every appointment of a referee by either party shall be given to the other party. If for fourteen days after notice by one party to the other to appoint a referee, or another referee, the other party fails to do so, then, on the application of the party giving notice, the county court shall within fourteen days appoint a competent and impartial person to be a referee. Where two referees are appointed, then (subject to the provisions of this act) they shall before they enter on the reference appoint an umpire. If before award an umpire dies or becomes incapable of acting, the referees shall appoint another umpire. If for seven days after request from either party the referees fail to appoint an umpire, or another umpire, then, on the application of either party, the county court shall within fourteen days appoint a competent and impartial person to be the umpire. Every appointment, notice, and request as aforesaid shall be in writing. Where two referees are appointed, an umpire may be appointed as follows:—

If either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the Inclosure Commissioners for England and Wales, then the umpire, and any successor to him, shall be appointed, on the application of either party, by those Commissioners.

In every other case, if either party, on appointing a referee, requires, by notice in writing to the other, that the umpire shall be appointed by the county court, then, unless the other party dissents by notice in writing therefrom, the umpire, and any successor to him, shall, on the application of either party, be so appointed, and in case of such dissent, the umpire, and any successor to him, shall be appointed, on the application of either party, by the Inclosure Commissioners for England and Wales.

The powers of the county court under the act, relative to the appointment of a referee or umpire shall be exerciseable by the judge of the court having jurisdiction, whether he is without or within his district, and may, by consent of the parties, be exercised by the registrar of the court. The delivery to a referee of his appointment shall be deemed a submission to a reference by the party delivering it; and neither party shall have power to revoke a submission or the appointment of a referee, without the consent of the other. The referee or referees or umpire may

call for the production of any sample, or voucher or other document, or other evidence which is in the possession or power of either party, or which either party can produce, and which seems necessary for determination of the matters referred, and may take the examination of the parties and witnesses on oath. Any person giving false evidence shall be guilty of perjury. The reference may proceed in the absence of either party, after notice given to the parties. The award is to be in writing, signed by the referees or umpire. In the case of a single referee the award shall be made ready for delivery within twenty-eight days of his appointment, and in the case of two referees within twenty-eight days of the appointment of the last appointed one, or within such extended time as they may jointly fix in writing, not to exceed forty-nine days from the appointment of the last appointed one. If the two referees are appointed, and fail to act or make their award as mentioned, then the umpire shall make his award within twenty-eight days after he shall have received notice in writing from one of the parties, or within such extended time as the registrar of the county court from time to time appoints, on the application of the umpire or either party.

The award shall deal with the duration of the improvements, and shall not award a sum generally for compensation, but shall specify several particulars as to the improvements and the time of making them ; and shall also specify whether the landlord was or not, at the time of consent, absolute owner, and the sum awarded in respect of each improvement, and the sum laid out by the tenant on each improvement.

The costs are to be borne and paid by the parties in such proportions as the referees or umpire shall deem right, taking into consideration the reasonableness of the claims. Such costs to be taxed by the registrar of the county court, subject to review by the judge.

The award is to fix a day for payment.

A submission or award is not to be made a rule of any court, and is not to be questioned otherwise than as provided by the act.

Where the sum claimed for compensation exceeds fifty pounds, either party may, within seven days after delivery of the award, appeal against it to the judge of the county court on the ground that (1) the award is invalid ; (2) that compensation has or has not been awarded for improvements, &c., in respect of which the party claiming was not or was entitled to compensation.

If no appeal is so brought, the award shall be final.

The decision of the judge of the county court on appeal shall be final, save that the judge shall, at the request of either party, state a special case on a question of law for the judgment of the High Court of Justice. Money due under the act, if not paid within fourteen days, shall be recoverable upon order by judge of the county court.

The county court, on the application of any person interested, may appoint a guardian of an infant landlord or tenant, or of one of unsound mind not so found by inquisition, and may appoint the next friend of a married woman. A married woman, entitled for her separate use and not restrained from anticipation, is to be, for the purposes of the act, in respect of law, as if unmarried. Any other married woman shall be examined separately by the judge of the county court as to her consent. Her husband's concurrence shall also be necessary. The costs of county court proceedings shall be at the direction of the court. Section 42 gives the landlord a charge, to be obtained from the county court, on the holding in respect of which he may have paid compensation.

The court shall have power, on proof of the payment, and on being satisfied of the observance in good faith by the parties of the conditions imposed by this act, to make an order charging the holding with repayment of the amount paid, or any part thereof, with such interest, and by such instalments, and with such directions for giving effect to the charge, as the court thinks fit.

Sections 45 and 50 deal with Crown and Duchy lands and Ecclesiastical and Charity lands. By section 51, where a half-year's notice, expiring with a year of tenancy, is by law necessary for determination of a tenancy from year to year, a year's notice shall be necessary for the same; but not to extend to a case where the tenant is adjudged bankrupt, or has filed a petition for a composition or arrangement with his creditors.

Section 52 deals with the resumption of the landlord in certain cases of the possession of cottages, &c., and the reduction of rent in consequence of such resumption extending only to part of a holding. The tenant is to be able to remove any engines or fixtures affixed by himself, of his own free will, to his holding, for which he is not entitled to compensation. He must, however, pay his rent, and satisfy his obligations to his landlord, and do no damage, or repair any damage done by removing any fixture. He must also give his landlord a month's notice of his intention to move a fixture; and the landlord is to have a right to purchase the fixture. The value to be ascertained by a reference under the act. But this clause is not to apply to any steam-engine erected by the tenant without notice in writing previously given to the landlord, or to the erection of which the landlord has in writing objected.

Nothing in the act shall apply to a holding that is not either wholly agricultural or wholly pastoral, or in part agricultural and as to the residue pastoral, or that is of less extent than two acres.

A tenant not to be entitled to claim compensation under this act and under any custom of the country or contract in respect of the same work or thing.

ARTIZANS' AND LABOURERS' DWELLINGS.

The act 38 & 39 Vict., cap. 36, was passed in order to facilitate

the improvement of the dwellings of the working classes in large towns. By section 2 the act applies only to the City of London and the Metropolis, and urban sanitary districts in England and Ireland, containing, according to the last published census, for the time being a population of 25,000 and upwards. The local authority shall be for London City, the Commissioners of Sewers; for the Metropolis, the Metropolitan Board of Works; for each urban sanitary district, the urban sanitary authority.

The act is divided into three parts. Part I. deals with unhealthy areas; Part II. contains provisions ancillary to improvement scheme; Part III. contains general provisions.

Part I. is subdivided into three parts. (1) Scheme by local authority, sections 3–5. (2) Confirmation of scheme, sections 6–8. (3) Execution of scheme by local authority, sections 9-12.

No. 1. By section 3 the local authority, on being satisfied by official representation of the unhealthiness of any houses, courts, or alleys within a certain area under its jurisdiction, may make a scheme for the improvement of such area; but no person beneficially interested in any lands within such area shall vote as a member of the local authority upon any question relating to the purchase or taking of the lands in which he is so interested, under a penalty of £20; but his vote shall not invalidate any resolution. Any number of areas may be included in one improvement scheme. An official representation shall mean, in the metropolis, a representation made by the medical officer of health, or by such medical officer, as in hereafter mentioned to the local authority, and elsewhere shall mean a representation made to the local authority by the medical officer of health of such authority. A medical officer shall make such representation whenever he sees cause; and if two or more justices of the peace acting within the jurisdiction for which he is medical officer, or twelve or more persons liable to be rated to any rate out of the proceeds of which the expenses of the local authority are made payable, complain to him of the unhealthiness of any area within such jurisdiction, it shall be the duty of the officer forthwith to inspect such area, and to make an official representation stating the facts of the case, and whether in his opinion the area is an unhealthy area or not an unhealthy area.

The improvement scheme is to contain maps, particulars, and estimates; and may exclude any part of the area in respect of which an official representation is made, or include any neighbouring lands; it may also provide for widening any existing approaches to the unhealthy area or otherwise for opening out the same for the purposes of ventilation or health; also it shall distinguish the lands proposed to be taken compulsorily, and shall provide for the accomodation of, at the least, as many persons of the working class as may be displaced in the area with respect to which the scheme is proposed, in suitable dwellings, which, unless there are any special reasons *to the contrary, shall* be situate within the limits of the

same area, or in the vicinity thereof; it shall also provide for proper sanitary arrangements. It may also provide for such scheme or any part thereof being carried out and effected by the person entitled to the first estate of freehold in any property subject to the scheme or with the concurrence of such person, under the superintendence and control of the local authority, and upon such terms and conditions to be embodied in the scheme as may be agreed upon between the local authority and such person.

No. 2. Upon the completion of the scheme the local authority shall publish during three consecutive weeks, in the month of September, October, or November, in some one and the same newspaper circulating within the district an advertisement stating that a scheme has been made, and the limits of the area to which it relates, and naming a place within the area where a copy of the scheme may be seen. Within the next month after the advertisement has been made, notices must be served, as in the act mentioned on every owner or reputed owner, lessee, and occupier of any lands proposed to be taken compulsorily, so far as such persons can be ascertained. After compliance with the provisions in the act, the local authority shall present a petition, in the case of London or the Metropolis, to a Secretary of State, and in the case of an urban sanitary authority, to the local government board, praying for the confirmation of the scheme.

If, on consideration of the petition and on proof of the publication of the proper advertisements and the service of the proper notices, the confirming authority think fit to proceed with the case, they shall direct a local inquiry to be held in, or in the vicinity of, the area to which the scheme relates, for the purpose of ascertaining the correctness of the official representation and the sufficiency of the scheme, and any local objections to be made to such scheme. After receiving the report made upon such inquiry, the confirming authority may make a provisional order declaring the limits of the area to which the scheme relates, and authorizing such scheme to be carried into execution. Such provisional order may be made either absolutely or with such conditions and modifications of the scheme as the confirming authority may think fit, so that no addition be made to the lands proposed in the scheme to be taken compulsorily, and a copy of any provisional order shall be served upon the persons upon whom notices in respect of lands proposed to be taken compulsorily are required by this act to be served, except tenants for a month or a less period than a month. A provisional order shall not be of any validity until it has been confirmed by Act of Parliament. The confirming authority may make such order as they may deem right as to the payment of the costs incurred by any person whose lands were proposed to be taken compulsorily in opposing the scheme. Where the local authority fail to make a scheme for the improvement of any area after an official representation has been made to them, such local authority is to send a copy of the official

representation accompanied by their reasons for not acting on it, and, upon the receipt of it, the confirming authority may direct a local inquiry to be held and a report to be made to them in the matter.

No. 3. Section 9 provides for the execution of the scheme, after an act confirming it has been passed. It is the duty of the local authority to carry such scheme into execution, and for this purpose they may sell or let all or any part of the area to which such scheme relates to any purchasers or lessees for the purposes and under the condition that such purchasers or lessees will carry the scheme into execution; and in particular they may insert in any grant or lease of any part of the area provisions binding the grantee or lessee to build thereon as in the grant or lease prescribed, and to maintain and repair the buildings, and prohibiting the division of buildings, and any addition to or alteration of the character of buildings without the consent of the local authority, and for the re-vesting of the land in the local authority, or their re-entry thereon, on breach of any provision in the grant or lease. The local authority may also engage with any body of trustees, society or societies, persons or person, to carry the whole or any part of such scheme into effect upon such terms as the local authority may think expedient, but the local authority shall not themselves, without the express approval of the confirming authority, undertake the rebuilding of the houses or the execution of any part of the scheme, except that they may take down any or all of the buildings upon the area, and clear the whole or any part thereof, and may lay out, form, pave, sewer, and complete all such streets upon the land purchased by them as they may think fit, and all streets so laid out and completed shall thenceforth be public streets, repairable by the same authority as other streets in the district.

Provided that in any grant or lease of any part of the area which may be appropriated by the scheme for the erection of dwellings for the working classes, the local authority shall impose suitable conditions and restrictions as to the elevation, size, and design of the houses, and the extent of the accommodation to be afforded thereby, and shall make due provision for the maintenance of proper sanitary arrangements. In any case in which the local authority erect any dwellings out of funds to be provided under this act, they shall, unless the confirming authority shall otherwise determine, sell and dispose of all such dwellings within ten years from the time of the completion thereof.

Section 10, empowers the confirming authority to complete the scheme on failure of the local authority to do so. Section 11, obliges the local authority to give thirteen weeks' notice by placards of their intention to take any fifteen houses or more, and also obliges the local authority to obtain a certificate from a justice of the peace, that it has been proved to his satisfaction, due notice has been given.

PART II. is subdivided into four parts. (1) Medical officers, sections *13–15*. *(2) Local inquiry*, sections 16–18. (3) *Acquisition of land, sections 19, 20.* (4) Expenses, sections 21–23.

No. 1. The Metropolitan Board of Works may, with the assent of a Secretary of State, at any time appoint one or more legally qualified medical practitioner or practitioners, with such remuneration as they think fit, for the purpose of better carrying into effect this act in the metropolis. In case of the illness or unavoidable absence of the medical officer of health, the district board, vestry, or local authority, as the case may be, may (subject to the approval of the confirming authority) appoint a duly qualified medical practitioner, who shall, for the period of six calendar months, or any less period to be named in the appointment, have and perform all the powers and duties of a medical officer of health under this act. Where twelve or more ratepayers have complained to a medical officer of the unhealthiness of any area within his jurisdiction, and he has failed to make an official representation, or has made one to the effect that in his opinion the area is not an unhealthy area, such ratepayers may appeal to the confirming authority, and, upon their giving security to the satisfaction of that authority for costs, the confirming authority shall appoint a medical officer to inspect such area and to make representation to the confirming authority, stating the facts of the case, and whether, in his opinion, the area is an unhealthy area or not an unhealthy area. The representation so made shall be transmitted by the confirming authority to the local authority, and if it state that the area is an unhealthy area the local authority shall proceed therein in the same manner as if it were an official representation made to that authority. The confirming authority shall make such order as to the costs of the inquiry as they think just, with power to require the whole or any part of such costs to be paid by the appellants where the officer appointed is of opinion that the area is not an unhealthy area, and to declare the whole or any part of such costs to be payable by the local authority where such officer is of opinion that the area is an unhealthy area.

Such order made by the confirming authority may be made a rule of court, and be enforced accordingly.

No. 2. Where a local inquiry is directed an officer shall be sent by the confirming authority to the area to which such inquiry relates, for the purpose of making an inquiry into the correctness of the official representation. Notice of such inquiry must be publicly given. The officer is empowered to administer an oath, and is obliged to report the result of the inquiry to the confirming authority, who may deal with the report as they think best.

No. 3. By section 19, certain parts of the "Lands Clauses Consolidated Acts" are applied and incorporated; but the act shall authorize the taking by agreement any lands which the local authority may require for the purpose of carrying into effect the scheme authorized by any confirming act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming act to be taken compulsorily. Whenever the compensation payable in

respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this act requires to be assessed, the estimate of the value of such lands or interest shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, and all circumstances affecting such value, without any additional allowance in respect of the compulsory purchase. By section 20, rights-of-way and other easements in respect of any lands required for the purpose of carrying the scheme into effect are to be extinguished, subject to compensation to persons suffering loss.

No. 4. By section 21, the local authority are directed to keep an account of their receipts and expenditure under the act. These receipts are to form a fund called the Dwelling House Improvement Fund. The requisite funds are, in the first instance, to be provided out of the local rates, or out of moneys borrowed under the provisions of this act.

Section 22, empowers the local authority to borrow money on the security of property acquired by them under the act, and enables them to pay the interest of borrowed money out of the local rates.

PART III. Sections 24-28, deal with the case where the local authority has no seal, and also with the method of serving notice on the local authority, and the power of confirming authority as to advertisements and notices, and dispensing with notices in certain cases. Section 29 provides a penalty, not exceeding £20, for any one obstructing officers executing the act. Section 31 contains definitions of terms made use of in the act.

The act also contains a schedule of considerable length, containing provisions with respect to the purchase and taking of lands in England otherwise than by agreement, and otherwise amending the "Lands Clauses Act, 1845."

ATTORNEYS AND SOLICITORS.

By 38 & 39 Vict., c. 79, s. 37 of 6 & 7 Vict., c. 73 (*ante*, p. 242), is amended, and any judge of the superior courts of law and equity in England, may authorize a solicitor to commence an action for his fees, charges, or disbursements, and also to refer his bill to be taxed by the proper officer, although a month shall not have expired from the delivery of the bill, on proof that the party chargeable therewith is about to quit England or become a bankrupt or a liquidating or compounding creditor or to take any other steps or do any other act which, in the opinion of the judge, might delay such solicitior in obtaining payment.

BALLOT ACT AMENDMENT.

See MUNICIPAL ELECTIONS.

Sunday the next Monday is to be a holi
the act of 1871.

BISHOPS RESIGNA

By 38 & 39 Vict., c. 19 the Bishops R
p. 126, *ante*), is made perpetual.

CHIMNEY SWEEP

By 38 & 39 Vict., c. 70 the laws relati
(*ante*, p. 376) are amended. This act
Scotland) enacts that every chimney
journeyman, assistant, or apprentice shal
be in force for a year), and shall pay a fe
the certificate. The chief officer of poli
has power to issue the certificate, which
in the schedule to the act. The certifica
but can, if desired, be extended free of
by obtaining the endorsement of the ch
registry of certificates is to be kept by
one acting as chimney sweeper without
penalty, on summary conviction, of 2
sweeper is obliged, if required by any
give his name and address, under a penal
must be produced on demand, and cannot
a penalty of 20s. The certificate can
chimney sweeper convicted under the "
of 1864 and 1840 (*ante*, p. 377).

trade dispute between employers and workmen shall not be indictable as a conspiracy if such act committed by one person would not be punishable as a crime.

No one is excepted however from any punishment for conspiracy awarded by act of parliament; nor is the law relating to riot, unlawful assembly, breach of the peace, or sedition, or any offence against the state or sovereign affected.

Where a person is convicted of any such agreement or combination as aforesaid to do or procure to be done an act which is punishable only on summary conviction, and is sentenced to imprisonment, the imprisonment shall not exceed three months, or such longer time, if any as may have been prescribed by the statute for the punishment of the said act when committed by one person.

Any person employed by a municipal authority, or by any company or contractor upon whom is imposed the duty of supplying any place with gas or water, breaking a contract of service having reasonable cause to believe that the probable consequences will be to deprive the inhabitants of that place of their supply, or any person wilfully and maliciously breaking a contract of service or of hiring, having reasonable cause to believe that the probable consequences will be to endanger human life, or cause serious bodily injury, or to expose valuable property to serious injury, is on conviction by a court of summary jurisdiction or on indictment, liable to pay a penalty not exceeding twenty pounds or to be imprisoned for a term not exceeding three months, with or without hard labour.

A master is by s. 6 liable to a penalty of twenty pounds or imprisonment not exceeding six months, with or without hard labour, for neglecting to provide proper food, clothing, &c., for his servant or apprentice where he is legally liable to do so. Every person who, with a view to compel any other person to abstain from doing or to do any act which such other person has a legal right to do or abstain from doing, wrongfully and without legal authority, uses violence to or intimidates such other person or his wife or children, or injures his property; or persistently follows such other person about from place to place; or hides any tools, clothes, or other property owned or used by such other person, or deprives him of or hinders him in the use thereof; or watches or besets the house or other place where such other person resides, or works, or carries on business, or happens to be, or the approach to such house or place; or follows such other person with two or more other persons in a disorderly manner in or through any street or road, is, on conviction, liable either to pay a penalty not exceeding twenty pounds, or to be imprisoned for a term not exceeding three months, with or without hard labour.

Attending at or near the house or place where a person resides, or works, or carries on business, or happens to be, or the approach

to such house or place, in order merely to obtain or communicate information, is not to be deemed a watching or besetting.

By section 8 justices are empowered to reduce penalties imposed by any act relating to employers and workmen to any sum not less than one-fourth of the penalty imposed. Any person accused under the act of an offence for which a penalty amounting to twenty pounds or imprisonment is imposed may elect to be tried on indictment. By section 12 an appeal is given to quarter sessions from any conviction by a court of summary jurisdiction. Nothing in the act is to apply to seamen or to apprentices to the sea-service.

COUNTY COURTS.

By 38 & 39 Vict., c. 50, sec. 2 of 30 & 31 Vict., c. 142 (*ante*, p. 507), and secs. 28 & 29 of 19 & 20 Vict., c. 108 (*ante*, p. 505) are repealed. By sec. 1 a plaintiff may, in an action in a county court for a debt or liquidated money-demand, cause an ordinary summons to be issued, or upon filing an affidavit to the effect set forth in the form in the schedule A to the act, a summons in form given in schedule B, and may require defendant to give notice, within 16 days after service, of his intention to defend, on pain of judgment by default. By section 2, either party may obtain of the registrar summonses to witnesses, with or without a requisition of books, &c., in the possession of the person summoned as a witness. Such summons may be served by a bailiff of the court, and may be proved by endorsement by the bailiff on a copy of the summons. A judge of county courts is, by section 4, empowered to make any order or exercise, on an *ex parte* application, any authority or jurisdiction in any action pending in any of his courts which, if the same related to an action pending in a superior court, a judge in chambers might make or exercise, and with the consent of both parties to hear and decide any matter at any place. A judge may also appoint skilled assessors to sit with him. Section 6 gives a right of appeal, except in a bankruptcy case, within 8 days, by motion, without stating special case. The act commenced on the 2nd of November, 1875.

EMPLOYERS AND WORKMEN.

By the Employers and Workmen Act, 1875 (38 & 39 Vict., c. 90), county courts are empowered to make orders of payment of money, set-off, and rescission of contract and taking security as between employers and workmen. By secs. 4 & 5 justices are given jurisdiction in disputes between employers and workmen, and between masters and apprentices, in respect of sums of money where the amount claimed does not exceed £10. The term "workman" does not include a domestic servant. The act does not apply to seamen or to apprentices to the sea-service. It is [redacted]lied, with certain modifications, to Ireland and Scotland.

EXPLOSIVE SUBSTANCES.

The Explosives Act, 1875 (38 & 39 Vict., c. 17), repeals 23 & 24 Vict., c. 139, and 24 & 25 Vict., c. 130 (see *ante*, p. 659). It is divided into four parts. Part I. and II., secs. 4–52, relate to gunpowder and other explosives. Part III. relates to the administration of the law, and Part IV. is supplemental. The act is a very long one, and space will only permit the first two parts to be briefly considered. Gunpowder is only to be manufactured in a factory lawfully existing or licenced under the act, and gunpowder may not be kept (except to the extent of 30lbs.) for private use elsewhere than on a magazine either lawfully existing or licenced under the act. The Secretary of State is the authority to whom an application for a licence must be made, and the draft of a licence must be accompanied by a plan of the proposed factory or magazine. The local authority must be applied to for its consent to the site of a new factory or magazine. Section 9 contains general regulations of factories and magazines, and section 10 contains general rules to be observed. Section 43 specially empowers Her Majesty, by Order in Council, to prohibit the manufacturing, importation, storage, and carriage of specially dangerous explosives.

FALSIFICATION OF ACCOUNTS.

By 38 & 39 Vict., c. 24, any clerk, officer, or employé destroying, altering, or falsifying any papers, &c., belonging to his employer, with intent to defraud, is guilty of a misdemeanour, and is liable on conviction to penal servitude for a term not exceeding seven years, or to imprisonment with or without hard labour for a term not exceeding two years.

FRIENDLY SOCIETIES.

38 & 39 Vict., cap. 60, applies to Friendly Societies in the United Kingdom, Channel Islands, and the Isle of Man. Section 4 contains definitions. By section 5, certain acts are repealed, including all the acts mentioned (*ante*, pp. 348–351), as affecting friendly societies. By section 8, the following societies may be registered under this act, viz : –

(1.) Societies established to provide by voluntary subscriptions of the members thereof, with or without the aid of donations—

For the relief or maintenance of the members, their husbands, wives, children, fathers, mothers, brothers or sisters, nephews or nieces, or wards being orphans, during sickness or other infirmity, whether bodily or mental, in old age (which shall mean any age after fifty) or in widowhood, or for the relief or maintenance of the orphan children of members during minority ;

For insuring money to be paid on the birth of a member's child.

or on the death of a member, or for the funeral expenses of the husband, wife, or child of a member, or of the widow of a deceased member, or, as respects persons of the Jewish persuasion, for the payment of a sum of money during the period of confined mourning;

For the relief or maintenance of the members when on travel in search of employment, or when in distressed circumstances, or in case of shipwreck, or loss or damage of or to boats or nets;

For the endowment of members or nominees of members at any age;

For the insurance against fire, to any amount not exceeding fifteen pounds, of the tools or implements of the trade or calling of the members;

Provided that no society (except as aforesaid) which contracts with any person for the assurance of an annuity exceeding fifty pounds per annum, or of a gross sum exceeding two hundred pounds, shall be registered under this act.

(2.) Societies for the insurance to any amount against loss by death of neat cattle, sheep, lambs, swine, and horses from disease or otherwise.

(3.) Societies for any benevolent or charitable purpose.

(4.) Societies for purposes of social intercourse, mutual helpfulness, mental and moral improvement, and rational recreation.

(5.) Societies for any purpose which the Treasury may authorise as a purpose to which the powers and facilities of this act ought to be extended.

The registry office is to consist of a chief registrar of friendly societies (to be a barrister of twelve years' standing), and one or more assistant registrars (to be barristers or solicitors of seven years' standing). The chief and assistant registrars are to hold office during the pleasure of the Treasury. The central office is to exercise functions of registrar of friendly or building societies, and of barrister appointed to certify savings banks. The other functions of the central office are—to prepare model forms, to circulate information as to statistics, &c., to construct tables. The chief registrar is to report his proceedings yearly to parliament. By section 11, no society consisting of less than seven persons can be registered. An application to register a society must be sent in signed by seven members and the secretary, and with a copy of the rules and a list of the names of the secretary and trustees. No identity of or deceptive similarity of name is to be allowed. Societies in which any part of the funds are divisible may be registered. Societies granting annuities are to have their tables certified by the actuary to the National Debt Commissioners. Societies doing business in more than one county are to be registered in the county in which their registered office is situate. The registrar shall issue an acknowledgment of registry when satisfied that a society has complied with the provisions in force

under this act. An appeal lies to the Court of Queen's Bench (in Scotland, to the Court of Session). The acknowledgment of registry is to be conclusive evidence that the society is registered. Sections 12 and 13 provide for the cancelling and suspension of registry, and the provisions to be contained in the rules and the regulation of amendments. Every registered society must have a registered office, and from time to time must appoint one or more trustees by a majority of members present at a public meeting. The accounts must be audited once a year, and a general statement of the receipts, &c., sent to the registrar before the 1st of June each year. Every five years, commencing within six months of the 31st of December, 1875, returns of the sickness and mortality experienced by each society must be sent to the registrar, and also a valuation of its assets and liabilities by a valuer to be appointed by the society. Any person having an interest in the funds may inspect books, &c., and ought to be supplied with copies of annual returns. Certificates of death are requisite. Stamp duty is not chargeable on any letter of attorney granted by any person as trustee for the transfer of funds, order, or receipt for money, bond, draft or order, or form of policy or appointment, &c., required or authorized under the act or by the rules.

Members can name a person to receive, on his death, a sum not to exceed £50. Payments to persons apparently entitled are valid. When trustees are absent, &c., the registrar may order stock to be transferred. Section 15 deals with the property and funds of societies. Section 18 deals with loans to members. The remaining sections are thirty-three in number, and of considerable length. They regulate the legal proceedings, the methods of payment, the dissolution of societies, and other matters.

INTESTATES WIDOWS AND CHILDREN.

By 38 and 39 Vict., c. 27, where all the effects of an intestate widow are less than £100, any one or more of her children, if resident more than three miles from the registry of the Court of Probate, having jurisdiction in the matter, may apply to the registrar of the county court within the district in which the intestate had her fixed place of abode at her death, and on compliance with the regulations of 36 and 37 Vict., c. 52, shall be entitled to the benefits of that act. (See *ante*, p. 436.)

JUDICATURE ACT.

38 and 39 Vict., c. 77, amends the Supreme Court of Judicature Act, 1873 (*ante*, p. 105). The sections of the act of 1873 relating to the power of appealing to the House of Lords are not to come into operation till the 1st of November, 1876, and until then an appeal may be *brought* to the House of Lords from the Court of *Appeal, or to Her Majesty* in Council, where before such an

appeal would lie. Section 5 of the act of 1873 is repealed. The Court of Appeal is to consist of the *ex-officio* members mentioned in the act of 1873 (*ante*, p. 107), and of so many ordinary judges not exceeding three at any one time as Her Majesty shall appoint. The first ordinary judges are to be the Lords Justices of Appeal in Chancery, and some one other person to be appointed. No judge of the Court of Appeal can sit on the hearing of any appeal from a judgment or order made by himself or by the divisional court of which he was and is a member. The London Court of Bankruptcy is not to be transferred to the High Court of Justice. The 10th section repeals sub-section of 25th section of the act of 1873, and enacts that in the case of a person dying insolvent, the same rules shall be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, as may be in force under the bankruptcy law with respect to bankrupt's estates. The rules of court in the first schedule to the act are of great length, and the act itself should be referred to in order properly to understand them. They have been substituted for the section 69, and the schedule to the act of 1873. All orders in council and rules must be laid before Parliament, and may be annulled on address from either house. The acts relating to procedure will probably be further dealt with next session.

JUSTICES OF THE PEACE.

By 37 & 38 Vict., c. 54, notwithstanding the act 18 Geo. II., c. 20 (*ante*, p. 142), any person of full age who has, during the two preceding years occupied a dwelling-house assessed at not less than £100 annual value within any county, and shall have been rated in respect of the same premises, and who is otherwise eligible, shall be deemed to be qualified to be appointed a justice of the peace for such county, but shall not continue to act for more than twelve months after he shall cease to be so qualified.

LANDS, TITLES, AND TRANSFERS.

38 & 39 Vict., c. 87, was enacted for the purpose of attempting to simplify titles and facilitate the transfer of land in England. The act contains 129 sections, and is divided into five parts. Part I. treats of the entry of land on a register of title, but registration has not been made compulsory. Part I. is subdivided into two Parts, which deal separately with the registration of title to freehold and to leasehold lands.

Part II. treats of registered dealings with registered lands. Sections 22–28 deal with mortgage of registered land. Sections 29–33 deal with the transfer of freehold land. Sections 34–39 deal with the transfer of leasehold land. Section 40 deals with the transfer of charges; and Sections 41–48 deal with the trans-

mission of land and charges. Section 48 repeals section 5 of 37 & 38 Vict., c. 78 (*ante*, p. 21, 1874, supplement, 20 lines from top), but practically re-enacts it, substituting the words "bare trustee under late" for "bare trustee."

Part III. treats of unregistered dealings with registered land. Part IV. is supplemental. Part V. provides for the administration of the law, and contains miscellaneous provisions. By the 129th section the 7th section of the 37 & 38 Vict., c. 78 is repealed (see *ante*, p. 21, 1874, supplement, 19 lines from foot), and tacking is again in force. The act is too lengthy to permit of more than a very brief notice in the present supplement.

MERCHANTS' SHIPPING.

By 38 & 39 Vict., c. 88, temporary provisions were enacted to give further powers to the Board of Trade to stop unseaworthy ships. The act expires on the 1st of October, 1876. The Board of Trade are empowered to appoint officers who have authority to stop any ship if they believe it to be in an unseaworthy condition. By section 2 any ship can be detained on the complaint of one-fourth of the crew, without any security being given for payment of costs, &c., and can be examined. By section 3 no cargo consisting as to more than one-third part of grain, &c., is to be carried in bulk. Section 4 provides penalties for sending unseaworthy ships to sea. Sections 5 and 6 provide for the marking load-lines on British ships. Proceedings to obtain compensation may be taken against the Board of Trade by action against the principal secretary. As the act expires so soon, it is unnecessary to consider it at greater length.

MUNICIPAL ELECTIONS.

By 38 & 39 Vict., c. 40, every candidate for a municipal election must be nominated in writing, and the town clerk must publish a notice of the election, as in the act mentioned, nine days beforehand. The nomination writing is to be subscribed by two enrolled burgesses, as proposer and seconder, and by eight other enrolled burgesses. Each candidate is to be nominated by a separate nomination paper, but the same burgesses may subscribe as many nomination papers as there are vacancies. Every candidate must be enrolled as a burger, and be otherwise duly qualified. If a candidate is absent from the United Kingdom his written consent, given within a month of his nomination, before two witnesses, should be produced. Every nomination paper to be delivered seven days at least before the election, before five in the afternoon of the last day for delivery. The town clerk is further to send notice to the person nominated.

The mayor shall attend at the town hall on the day next after the last day for the delivery of nominations to the town clerk

between the hours of two and four in the afternoon, and shall decide on the validity of every objection made to a nomination paper, such objection to be made in writing. The candidate nominated by each nomination paper, and one other person only, appointed by the candidate, shall attend such proceedings, and shall have power to object to any nomination paper. The decision of the mayor, in writing, to be final. The mayor is to appoint officers to take the poll, and to furnish and erect polling stations, as required by the Ballot Act (*ante*, p. 39). The burgess roll is to be conclusive evidence. Notices by mayor or town clerk may comprise the matters necessary for such notice for the several wards of the borough.

The town council is, by section 10, empowered to divide wards into polling places.

PUBLIC HEALTH.

By 38 & 39 Vict., c. 55 ("The Public Health Act, 1875"), all previous acts relating to the public health, and dealing with questions affecting nuisances, sewage, or other sanitary matters outside the metropolis (*ante*, pp. 662-665) have been consolidated and amended, so that this act may be regarded as a short code of the statute law on all such matters. It does not however apply to Scotland or Ireland, and only extends to the metropolis when expressly so provided.

The act is divided into eleven parts. Of these Part I. is preliminary. Part II. defines the urban and rural sanitary districts and authorities, which are substantially the same as in the "Public Health Act, 1872" (*ante*, p. 665). Local boards and improvement commissioners, being urban sanitary authorities and not previously incorporated, are declared to be bodies corporate; and the powers and duties of both urban and rural authorities are stated, including, as in the act of 1872, the duties arising out of the "Bakehouse Regulation Act, 1863" (26 & 27 Vict., c. 40); and, in the case of urban authorities, the carrying out of the "Artizans and Labourers' Dwellings Act, 1868" (31 & 32 Vict., c. 130), and also of the "Baths and Wash-houses Acts" (9 & 10 Vict., c. 74, and 10 & 11 Vict., c. 61), and the "Labouring Classes Lodging-houses Acts, 1851, 1866, and 1867" (14 & 15 Vict., c. 34, 29 & 30 Vict., c. 28, and 30 & 31 Vict., c. 28), when the same are in force within their district. Part III., sections 13-26, contain regulations as to sewers and drains, which, with some few exceptions, are to be vested in the local authorities, who have power to purchase sewers belonging to private persons. The local authorities are empowered to make and maintain sewers and enforce drainage; but it is provided that all sewage must be purified before being discharged into any stream, pond, canal, or lake, and that any person erecting or re-building a house without approved drains shall be liable to a penalty not exceeding fifty pounds. By sec-

tions 27–34, power is given to dispose of sewage, and to construct sewage works outside the district of the local authority. Sections 35–41. deal with the construction and examination of privies, &c., and the power given by 31 & 32 Vict., c. 115, s. 4, to adopt earth closets, is continued. The power of the local authority to enforce separate privy accommodation for the sexes in factories and buildings, which by 29 & 30 Vict., c. 90, s. 52, was limited to factories, &c., in which persons of both sexes above twenty in number are employed, is continued, without the restriction as to number. Sections 42–47 relate to scavenging and cleansing of streets and houses, and impose penalties on persons whose houses are found to be in a filthy or unwholesome condition, if they do not comply with an order of a local authority to cleanse them; or who, in any urban district, keep pigs, so as to be a nuisance, or suffer waste or stagnant water to remain in any cellar or place within a dwelling-house for twenty-four hours after notice to remove; or who allow the contents of any water-closet, privy, or cesspool to overflow as waste therefrom. Sections 48–50 provide for cleansing offensive ditches lying near to or forming the boundaries of districts, for removal of filth on a certificate of inspector of nuisances, and for periodical removal of manure from mews, stables, &c. Sections 51–67 contain the powers of the local authority in relation to supply of water, enabling an urban authority to construct waterworks reservoirs, &c., or contract for supply of water, subject to certain limitations, and to charge water-rate or supply by meter. By section 66, it is made the duty of the urban authority to provide fire-plugs and all necessary works and machinery for securing an efficient supply for water in case of fire. Sections 68–70 impose heavy penalties for causing water to be corrupted by gas-washings, and enable local authority to take proceedings to prevent the pollution of streams, and give power to close wells containing water not fit for drinking purposes. The regulation of cellars, dwellings, and lodging-houses occupy sections 71–90. Sections 71–75 limit the condition under which any cellar dwellings may be used, and require every such cellar to be at least seven feet from floor to ceiling, and give power to close such cellars in case of two convictions for the breach of the provisions of any act relating to their occupation. Sections 76–90 consolidate the law affecting common lodging-houses, so far as relates to the registration and controlling such houses, and make provisions for water supply, cleansing, inspection, &c. The definition of nuisances given in this act (section 91) includes the nuisances in 18 & 19 Vict., c. 121, s. 8, and in the "Sanitary Act, 1866" (*ante*, p. 662). Sections 92–111 contain the provisions for detecting and suppressing nuisances. Section 108 applies to the metropolis so far as to authorize proceedings to be taken under it by any metropolitan nuisance authority in the metropolis in respect of any

nuisance, within the area of its jurisdiction, caused by any act or default committed within the district of a local authority under this act, or *vice versâ*. This section seems to apply specially to the suburban districts of the metropolis.

Sections 112–115 restrain the establishment within the district of an urban sanitary authority, without the consent, in writing, of such authority of the trade of blood-boiler, bone-boiler, fellmonger, soap-boiler, tallow-melter, tripe-boiler, or any other noxious or offensive trade, business, or occupation, under a penalty not exceeding £50, and a further penalty not exceeding 40s. per day for its continuance; and the urban authority may make bye-laws to prevent the injurious effects of any such offensive trades; and, by section 115, may take proceedings when any nuisance arises from any offensive trade carried on without the district. This last section applies to the metropolis so far as to authorize any nuisance authority to take proceedings in respect of any building, manufactory, or place certified in accordance with section 114, to be injurious to the health of any of the inhabitants within the area of their jurisdiction, if situate within the district of a local authority under this act; and to authorize any urban authority, under like circumstances, to take proceedings with respect to any such matters situate within the jurisdiction of such nuisance authority. Sections 116–119 relate to unsound food – the powers of the medical officers of health or inspector of nuisances to inspect meat, poultry, game, flesh, fish, fruit, vegetables, corn, bread, flour, or milk exposed or proposed for sale and intended for human food; and if the same is found unfit for food it may be destroyed by order of a justice of the peace. A penalty not exceeding £5 is imposed on any person hindering the officers in the discharge of their duties, and a search warrant may be granted. Sections 120–133 relate to infectious diseases and hospitals — the destruction of infected articles, provisions for disinfection, for removal und conveyance of infected persons; and impose penalties on persons suffering from dangerous infectious diseases who expose themselves without proper precaution against spreading diseases in any public place or conveyance, and like penalties on persons in charge of any persons so suffering who so exposes such sufferer, or who gives, lends, or transmits, or exposes any articles of bedding or clothing, which have been exposed to infection, unless the same have been previously disinfected. Penalties are also imposed on any person failing to provide for the disinfection of a public conveyance; or letting houses or rooms in which infected persons have been lodging, unless they have been disinfected to the satisfaction of a duly qualified medical practitioner. It is expressly provided that this shall apply to an innkeeper. Also if a person letting or showing a house for letting on being questioned as to the fact of there being or having been within six weeks previously, any person therein suffering from any

dangerous disease, knowingly make a false answer to such question such person is to be liable to a penalty not exceeding £20, or to imprisonment not exceeding one month with or without hard labour. The local authorities have, by section 131, power to provide hospitals or a common hospital for two or more districts. With a view to prevent the spread of epidemic diseases, sections 134–140, empowers the local government board to make regulations, for the speedy interment of the dead; for house-to-house visitation, and for medical aid in guarding against spread of diseases; and such rules may extend to any vessels, whether in inland waters or on the sea, within the jurisdiction of the Lord High Admiral of the United Kingdom. Sections 141–143 enable local authorities to provide mortuaries and places for post-mortem examinations.

Part IV., local government provisions. Sections 144–148, relate to highway and construction of new public roads and bridges.

Sections 149–159 include the regulation of streets and buildings, with power to compel paving and metalling of private streets, to require gas and water-pipes to be moved, and to fix a building-line in a street to prevent buildings being brought forward; and section 160 incorporates certain provisions of the "Towns Improvement Clauses Act 1846 (10 & 11 Vict., c. 34), as to naming streets, numbering houses, imposing line of streets, removing obstructions, nuisances, or dangerous buildings, &c. The lighting of streets, markets, and public buildings may be provided under sections 161–163. By sections 164–165 the urban authority may provide places of public recreation and public cocks.

Markets and slaughter-houses may be provided and regulated under sections 166–170. Section 171 incorporates the provisions of the "Towns Police Clauses Act," 1847 (10 & 11 Vict., c. 89), with respect to obstructions and nuisances in streets and places of public resort, hackney carriages, public bathing, &c.; and by section 172, an urban authority may make bye-laws for licensing horses, boats, &c., for hire.

The remaining parts of the act contain provisions for carrying out the powers given by the act for making rates, borrowing money, appointing officers, and taking legal proceedings. Five schedules are appended, which relate to the election, meetings, and proceedings of local boards, and certain forms to be used under the act, with a list of repealed statutes.

SALE OF FOOD AND DRUGS.

By 38 & 39 Vict., c. 63 the "Adulteration of Food Acts" are repealed (*ante*, pp. 305–308), and an attempt has been made to make better provision for the sale of food and drugs in a pure state. The term "food" includes every article of food and drink other than drugs and water. The term "drug" includes medicine for internal or external use. By section 3 no person (under a penalty of £50 for

the first, and imprisonment for six months as a misdemeanant for a subsequent offence) is to mix injurious ingredients with any article of food, or to sell any article with which an injurious ingredient has been mixed. The 4th section contains provisions as to drugs somewhat similar to those contained in No. 3 section as to food. By section 5 proof of absence of knowledge of adulteration will exempt an offender. By section 6 the sale of articles of food and of drugs not of the proper nature, substance, and quality, is prohibited; but by section 8 persons selling are protected by giving, at the time of delivery, a label containing a correct description of the article sold. The abstraction of any part of an article of food before sale, and selling without notice, renders a person liable to a penalty of £20.

Sections 10–19 deal with the appointment of analysists and the obtaining analyses. Sections 20–28 deal with proceedings against offenders. By section 30 tea is, upon importation, to be examined by the Customs.

The act applies to Ireland, and came into operation on the 1st of October, 1875.

SUNDAY ENTERTAINMENTS.

By 38 & 39 Vict., c. 80, Her Majesty is empowered to remit, in whole or in part, any penalty, fine, or forfeiture imposed or recovered for any offence under 21 Geo. III., c. 49 (*ante*, p. 617), whether on indictment, information, or summary conviction, or by action, or any other process.

REGISTRATION OF TRADE MARKS.

By the "Trade Marks Registration Act, 1875" (38 & 39 Vict., c. 91), a registration of trade marks has been established, under the superintendence of the Commissioner of Patents, and after the 1st of July, 1876, no one can institute proceedings to prevent the infringement of an unregistered trade mark. A trade mark must be registered as belonging to particular goods or classes of goods. A registry office is to be established before the 1st of January, 1876.

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THE

CABINET LAWYER:

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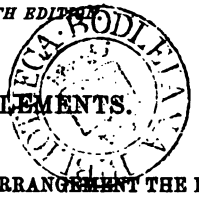

[redacted] SUPPLEMENTS.

GIVING IN ALPHABETICAL ARRANGEMENT THE EFFECT OF THE LEGISLATION OF 1874, 1875, AND 1876.

"I wish every man knew as much law as would enable him to keep out of it."—LORD BACON.

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LONGMANS, GREEN, READER, AND DYER.
1877.

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SUPPLEMENT.

ACTS OF THE SESSION OF 1876.

(39 & 40 VICT.),

ALPHABETICALLY ARRANGED.

ADMINISTRATION OF INTESTATES' ESTATES.

By the first section of 39 & 40 Vict. cap. 18, the person holding the office of Treasury Solicitor is made a corporation sole, and by the name of the Solicitor for the affairs of her Majesty's Treasury, may have perpetual succession, with capacity to acquire and hold lands and securities, and to sue and be sued, and to execute deeds, &c. By section 2, letters of administration to the personal estate of any person to which her Majesty may have become entitled, may be granted to the Treasury Solicitor (by his official name), or to his nominee upon warrant. By the 5th section, the Treasury may make rules (to be laid before Parliament within one month after) for carrying the Act into effect. By section 4, all moneys, securities, and property vested in the Treasury Solicitor, as having accrued by virtue of the Royal prerogative, shall be disposed of as provided by the rules under the act, and so far as the rules do not apply, all moneys, securities, &c., arising from such property shall be carried to an account referred to in the act as the Crown's nominee account, and all moneys standing to the said account shall be paid into the account of the Treasury. Where any securities to which this section applies may have been granted to any person and left unclaimed within the period fixed by the rules, such securities may be sold, and the proceeds paid into the account, but the Treasury are given power to transfer the sum representing such proceeds out of the consolidated fund to any person *who can show a right* to the same sum.

APPELLATE JURISDICTION.

The Appellate Jurisdiction Act, 1876 (39 & 40 Vict. cap. 59), reconstitutes the Appellate Jurisdiction of the House of Lords which has been nearly entirely taken away by the Supreme Court of Judicature Act, 1873, (see *ante*, p. 105; see also Supplement, 1874, p. 11; and Supplement, 1875, p. 21.)

This act (except where otherwise expressly provided) came into operation on the 1st of last November (1876). By section 3, an appeal shall lie to the House of Lords from any order or judgment of her Majesty's Court of Appeal in England; and of any Court in Scotland from which error or an appeal at or immediately before the commencement of this act lay to the House of Lords by common law or by statute; and of any Court in Ireland from which error or an appeal at or immediately before the commencement of this act lay to the House of Lords by common law or by statute.

By section 4, every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

An appeal shall not be heard and determined by the House of Lords unless there are present not less than three of the following persons, designated Lords of Appeal; that is to say, the Lord Chancellor of Great Britain for the time being; and the Lords of Appeal in Ordinary to be appointed as in the act mentioned; and such Peers as are for the time being holding or have held any high sudicial offices.

By section 6, for the purpose of aiding the House of Lords in the hearing and determination of appeals, her Majesty may, by letters patent, appoint two qualified persons to be Lords of Appeal in Ordinary.

A person shall not be qualified to be appointed a Lord of Appeal in Ordinary unless he has been at the time of his appointment the holder for a period of not less than two years of some one or more high judicial offices, or has been, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland. Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the Crown, but he may be removed from such office on the address of both Houses of Parliament. There shall be paid to every Lord of Appeal in Ordinary a salary of six thousand pounds a year.

Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall according to the date of his appointment be entitled during his life to rank as

a baron by such style as her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer, be entitled to a writ of summons to attend, and to sit, and vote in the House of Lords; his dignity as a Lord of Parliament shall not descend to his heirs. A Lord of Appeal in Ordinary shall, if a Privy Councillor, be a member of the Judicial Committee of the Privy Council. The pension of any Lord of Appeal may be granted, after fifteen years service, or if he is disabled by permanent infirmity, by way of an annuity for life, equal in amount to the pension of the Master of the Rolls, under the Supreme Court of Judicature Act, 1873. Previous service in any high judicial office is to count as service in the office of Lord of Appeal in Ordinary for the purpose of pension.

For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, during any prorogation of Parliament, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said House in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation.

The hearing and determination of appeals during the dissolution of Parliament may be provided for by writing under the Queen's sign manual, authorizing the Lords of Appeal in the name of the House of Lords to hear and determine appeals during the dissolution, and for that purpose to sit in the House of Lords. By section 11, the procedure under the act is to supersede all other forms of procedure. And by section 12, no appeal shall lie from any Court in Scotland or Ireland, in any case which hitherto could not have been reviewed by the House either in error or on appeal. By section 13, the jurisdiction of the House in respect of pending business is preserved.

By section 14 whenever any two of the four paid judges of the Judicial Committee of the Privy Council, appointed under 34 & 35 Vict. cap. 91 (see *ante*, p. 56), have died or resigned, the Queen may appoint a third Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary mentioned above, and on the death or resignation of the remaining two paid judges, a fourth Lord of Appeal in Ordinary may be appointed.

Her Majesty may by Order in Council, with the advice of the Judicial Committee of the Privy Council or any five of them, of

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BANKERS' BOOKS EVIDENCE.

entries in bankers' books are admissible as *primâ facie* evidence of the matters recorded therein, upon proof being given by affidavit, in writing, of one of the partners, managers, or officers of such bank, or by other evidence, that such books are or have been the ordinary books of such bank, and are in or come immediately under the control of such bank, and that the entries have been made in the ordinary course of business. Nothing in this clause s to apply to any legal proceeding, to which any bank whose books may be required to be produced in evidence is a party. Copies of entries may be used as evidence without production of the originals, upon affidavit of a person who has examined such copies and compared them with the original entries. Five days' notice in writing, or such other notice as may be ordered by the court (such notice to contain a copy of the entries proposed to be adduced) must be given by the party proposing to adduce the same in evidence to the other party or parties to the proceedings—and such other party or parties must be at liberty to inspect the original entries before the copies can be used in evidence.

On the application of any party who has received such notice a judge of one of the superior courts may order that such party be at liberty to inspect and take copies of any entries in the books of any such bank relating to the matters in question—any such orders may be made at the discretion of the judge either with or without summoning before him the bank or other parties—and shall be intimated to the bank at least three days before copies are required. A judge of one of the superior courts may order, upon the application of any party, that such copies are not admissible. No bank shall be compelled to produce its books except upon special order of a judge.

COMMONS.

The Commons Enclosure Act, 1876 (39 and 40 Vict., cap. 56), give further facilities for enabling the Inclosure Commissioners to regulate, improve, stint, and otherwise deal with commons without wholly enclosing and alloting the same in severalty :

The Inclosure Commissioners may entertain an application made in manner in this Act mentioned for a provisional order—

(1.) For the regulation of a common ; or (2.) for the enclosure of a common or parts of a common ; further, an application may be made as respects the same common for the regulation of part of such common, specifying the part to be regulated, and for the enclosure of the residue, and in such case the application shall be dealt with as respects such parts as if they were separate commons, with this exception, that the boundaries as proposed in the application of the part to be regulated and the part to be enclosed may be modified by the provisional order. The Commissioners shall not proceed to carry any application under this Act into effect until it is made to appear to them that the persons making the

application represent at least one-third in value of such interest in the common as are proposed to be affected by the provisional order. A provisional order for the regulation of a common may provide for the adjustment of rights or improvements. The adjustment of rights comprises the determination of the persons (and the degree of their interest) by whom the rights of pasture, of herbary, or taking of estovers, or taking gravel, stone, or otherwise interfering with the soil of the common are to be exercised, and also (on compensation made to any person aggrieved, either by grant of a right of equal value, or, with his consent in writing, of money) the restriction or abolition of any rights interfering with the soil which may permanently injure the common; and also comprises the determination of the rights and obligations of the lord of the manor, severalty owners, or other persons entitled to the soil, and also of any rights or disputes relating to boundaries, rights in the soil or produce of the soil or otherwise. The improvement of a common comprises the draining, levelling, and planting the common, and also the making bye-laws for its protection, and otherwise for its general management and for appointing conservators.

By sec. 7, the Inclosure Commissioners in any provisional order relating to a common are to consider whether the application will be for the benefit of the neighbourhood, and shall insert terms and conditions, such as free access to particular points of view, preservation of trees or objects of historical interest, reservation of roads or footpaths, &c.

Notice of any application under the Act in relation to a suburban common, *i.e.*, one which is situate either wholly or partly in any town, or within six miles of any town, shall be served on the urban sanitary authority having jurisdiction over such town, and such urban sanitary authority may appear before the Assistant Commissioner and the Inclosure Commissioners, and make to them such representations as may be fit with respect to the expediency of such application, regard being had to the health, comfort, and convenience of the inhabitants of the town over which such authority has jurisdiction.

Any urban sanitary authority entitled to receive notice of an application in relation to a suburban common may, with the sanction of the Inclosure Commissioners, enter into an undertaking to contribute out of their funds towards the maintenance of grounds, or of paths or roads, or the doing any other thing for the benefit of their town in relation to the common to which such application relates. They may also enter into an undertaking to pay compensation in respect to the rights of commoners, and may purchase, with a view to prevent the extinction of the rights of common, any saleable rights in common or any tenement of a commoner having annexed thereto rights of common.

They may also, with the consent of persons representing at least one-third in value of such interests in a suburban common as are

proposed to be affected by the provisional order, make an application to the Enclosure Commissioners for the regulation of such common.

Section 10 lays down the rules to be observed with respect to an application to the Inclosure Commissioners for a provisional order, in relation to the publication of notices of application, the manner of the application, the evidence to be furnished in support of the application and in relation to the benefit of the neighbourhood and to private interests. Section 11 lays down the rules as to a local inquiry held by order of the Commissioners. Section 12 lays down the rules with respect to provisional orders, such as the method of making the draft order—the provisions to be inserted for the benefit of the neighbourhood and for the protection of private interests, the depositing a copy of the order in the parishes in which the common is situated, and the obtaining the consents of the persons representing at least two-thirds in value of the interests in the common affected by the order—and the reservation in favour of freemen interested in the common. A provisional order may also contain power to raise money for the improvement of the common.

By section 15, the majority in value of the owners of skirts or rights of pasture created under the provisions of 8 & 9 Vict., cap. 118 (*ante* p. 423), are empowered to make bye-laws to regulate and manage the pasture with the consent of the lord of the manor; such bye-laws to be approved by a Secretary of State. Pecuniary penalties not to exceed 40*s.* may be inflicted and may be recovered summarily. Sections 21—29 amend the enclosure acts in relation to field gardens and recreation grounds. By section 30, a county court within whose jurisdiction any common or part of a common is situate may hear any case relating to any illegal inclosure or encroachment, or to any nuisance impeding the exercise of any right of common arising after the passing of this Act, and may grant an injunction against—or make an order for the removal or abatement of—such inclosure, encroachment, or nuisance.

CROSSED CHEQUES ACT, 1876.

By this act (39 & 40 Vict. c. 81) acts 19 & 20 Vict. c. 25 and 21 & 22 Vict. c. 79 (*ante*. p. 453) are repealed, and it is declared that a cheque crossed with two lines, with or without any words, shall be deemed to be crossed generally, and that a cheque crossed with the name of a banker shall be deemed to be crossed specially to that banker. Where a cheque is uncrossed or crossed generally, a lawful holder may cross it generally or specially, and may add the words "not negotiable." Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection. A crossing shall be deemed a material part of the cheque, and no person shall obliterate or, except *as authorized by this* act, add to or alter the crossing. Where

a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker. Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment. Where the banker on whom a crossed cheque is drawn has in good faith paid such cheque, if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection, being a banker, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer shall respectively be entitled to the same rights, and be placed in the same position in all respects, as they would respectively have been entitled to and have been placed in if the amount of the cheque had been paid to the true owner. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same shall be crossed, or his agent for collection, being a banker, shall be liable to the true owner of the cheque for any loss he may thereby sustain. Where a cheque is presented for payment, which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorized by this act, a banker paying the cheque in good faith shall not be responsible, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing have been obliterated, or having been added to or altered otherwise than as authorized by this Act, or of payment being made otherwise than to a banker or the banker to whom the cheque is or was crossed, or to his agent for collection being a banker. A person taking a cheque crossed generally or specially bearing in either case the words "not negotiable," shall not have a better title to the cheque than that which the person from whom he took it had. But a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

CRUELTY TO ANIMALS.

By the Cruelty to Animals Act, 1876 (39 & 40 Vict. cap. 77), painful experiments are prohibited to be inflicted on any animal, except under restrictions imposed by the act. Penalty for the first offence not to exceed £50; for any subsequent offence not to exceed £50 or imprisonment for three months. The third section imposes restrictions, and the fourth that no painful operation on any animal shall be performed by any person who does not hold a license from the

Secretary of State (sec. 8) to perform experiments under the act. Conditions may be attached to such license, which may be revoked at any time for reason given. The animal on whom the experiment is to be performed must be the whole time under the influence of a sufficiently powerful anæsthetic, and must, if the pain is likely to continue, be killed immediately afterwards.

Experiments must be performed with a view to advance knowledge useful for saving life or alleviating suffering, and not as illustrations of lectures or to obtain manual skill: Provided that experiments may be performed, subject to the use of anæsthetics, by a lecturer on a certificate, obtained as in the act mentioned, that the proposed experiments are absolutely necessary for the due instruction of persons with a view to their acquiring proper knowledge. Experiments may also be performed without anæsthetics on a certificate that insensibility would frustrate the object of such experiments. The animal experimented upon need not be killed before recovering from the influence of the anæsthetic, if a certificate is obtained that so killing the animal would frustrate the object of the experiment, provided that the animal be killed so soon as the object has been attained. The substance known as urari or curare is by section 4 forbidden to be used as an anæsthetic for the purposes of the act. By section 5, special restrictions are laid on performing experiments on cats, dogs, horses, mules, or asses, without anæsthetics, except on a special certificate that no other animals would answer the purpose. By section 6, public exhibitions of painful experiments are absolutely prohibited, under a penalty of £50 for first offence, and £100 or three months imprisonment for any subsequent offence. Any person advertising any such exhibition is liable to a penalty not exceeding £1.

By section 7, the Secretary of State may insert in a license a provision for regulating in manner he may direct, by general or special order, the place for performance of experiments, and may direct the person performing experiments to make such reports as to results as shall be required. By section 10, the Secretary of State is to cause all registered places to be inspected. By section 11, an application under the act, and a certificate given as required by the act, must be signed by the presidents of the following societies or colleges, viz., Royal Society, Royal Society of Edinburgh, Royal Irish Academy, Royal Colleges of Surgeons in London, Edinburgh, or Dublin; Royal Colleges of Physicians in London, Edinburgh, or Dublin; General Medical Council, Faculty of Physicians and Surgeons of Glasgow—and, in the case only of experiments to be performed under anæsthetics, with a view to the advancement of veterinary science, the President of the Royal College of Veterinary Surgeons or of the Royal Veterinary College, London—and also (unless the applicant be one himself), by a professor of physiology, medicine, anatomy, medical jurisprudence, materia medica, or surgery of Great Britain or Ireland. Superior

judges are, for the purposes of criminal trials, empowered to grant licenses for experiments. Sections 13–20 deal with legal proceedings. By section 21 no prosecution can be conducted against a licensed person except with the assent in writing of the Secretary of State. By section 22 the act does not apply to invertebrate animals.

ELEMENTARY EDUCATION ACT, 1876.

The above act (39 and 40 Vict. cap. 79) was passed to provide further for the education of children. The responsibility of obtaining sufficient elementary education for children is thrown on their parents, subject to orders and penalties provided by the act. All persons, under a penalty of 40*s.*, are prohibited from taking into their employmemt any child who is under ten years of age, or who, being over ten years of age, has not obtained the certificate, as required by the act, of proficiency in reading, writing, and arithmetic, or of previous due attendance at a certified school, unless such child is employed and is attending school in accordance with the provisions of the factory Acts, or of any bye-law of the local authority.

The act is to be enforced by a school board, or by a committee appointed annually, if in a borough by the council of the borough, and if in a parish by the guardians of the union. This committee is called in the act "a school attendance committee." A school attendance committee may consist of not less than six or more than twelve members of the council or guardians, and, if possible, one third, at least, shall consist of *ex-officio* guardians. The inspectors and sub-inspectors of factories, workshops, and mines may enforce the observance of this act by employers, but the local authority is to assist them. The provision respecting the education of children employed in workshops by the Workshops Regulation Act, 1867 (*ante*, p. 365), is no longer applicable, and for such provision are substituted the provisions respecting education contained in the Factory Acts, 1844 and 1874. (See *ante*, p. 361 and Appendix 1874, p. 9.)

Where no public elementary school is within two miles of the residence of a child, or where the employment is at such time as does not interfere with school hours, there is an exception to the prohibition of employment of the child. The local authority may also exempt from the act a child above eight years of age for the necessary operations of husbandry, during a limited period not to exceed six weeks any year. The parish guardians, if satisfied of the poverty of a parent, not a pauper, may pay school fees for a child, not to exceed 3*d.* a week. The parent shall not, by reason of any such payment, be deprived of any political right. Such payment shall not be made on condition of the child attending any public elementary school other than such as may be selected by the parent, nor refused because the child attends, or does not attend, any particular public elementary school.

The twenty-fifth section of the Elementary Education Act, 1870 (*ante*, p. 122), is repealed.

A court of summary jurisdiction is empowered, upon complaint by the local authority, made after due warning to the parent, to order the attendance at some certified school willing to receive him and chosen by the parent, of a child who is habitually neglected by parents, or who wanders and consorts with criminals or disorderly persons; and if no such school then at such public elementary school as may be thought expedient, unless there is no such school within two miles of the residence of the child, or unless the child is ill. If such order is not complied with a court may inflict penalties on the parent not exceeding, with costs, 5*s.* for first case of non-compliance; or, if the court be satisfied that the parent has done his best, it may order the child to be sent to a certified day-school, or if no such school suitable, then to a certified industrial school. A child thus sent shall be sent in like manner as if sent in pursuance of the Industrial Schools Act, 1866 (29 & 30 Vict. cap. 118, *ante*, p. 120); and the parent, if liable under that act, and acts amending the same, for maintenance, shall be so liable. A license can be granted to a child sent to an industrial school to live out while attending school. The Secretary of State may in like manner as under the 29 & 30 Vict. cap. 118, certify any school to be a certified day industrial school, in the neighbourhood of any school district population in which it may be wanted. Sums not exceeding 1*s.* per head per week may be contributed out of moneys granted by Parliament towards the custody, training, and education of children sent by an order of a court, not an attendance order, to a certified day industrial school.

If a child is ordered, otherwise than by an attendance order, to be sent to a certified day industrial school, the parent may be ordered to contribute a sum not exceeding 2*s.* a week towards the maintenance of such child; and if a parent, resident in a parish, is too poor, the guardians may assist the parent to pay the sum. The managers of a certified industrial day school may, upon report of local authority, and upon the parent of a child undertaking to pay a sum not less than 1*s.* a week, receive such child without an attendance order or order of the Court; and a sum not exceeding 6*d.* a week may be contributed besides out of moneys granted by Parliament. The conditions of a parliamentary contribution to a certified day industrial school are, to provide for the examination of children according to standards of proficiency.

Where, during the first five years after the commencement of the act, or any further period which may be fixed by Order in Council, a child, before he has attained the age of eleven years, obtains a certificate of proficiency in elementary education, and also of previous due attendance at a public elementary school, then the school fee payable by such child at any public elementary school in the course of the three years next after he obtains the

last of such certificates, not exceeding the ordinary fee charged at such school, may be paid by the Education Department out of moneys provided by Parliament, the school fees so paid to be reckoned as school pence to be met by the grant payable by the Department.

School attendance committees are given like powers with school boards of enforcing by by-law attendance of children. In case of failure of local authority to perform their duty under this act the Education Department may, if authority be a school board, proceed as under the Elementary Education Act, 1870 (*ante*, p. 122); if authority be not a school board, appoint any persons for a period not exceeding two years to perform the duty of such authority.

During such period the persons so appointed shall perform the duty of the defaulting school attendance committee under this act, to the exclusion of that committee, but shall not be subject to any control on the part of the council or guardians who appointed the defaulting committee; but after the expiration of such period a school attendance committee shall forthwith be appointed by the council or guardians as the case may require, and shall resume the duty of the local authority. In such case all expenses incurred by the Education Department, including such remuneration, if any, as may be assigned to such persons, shall, to the amount certified to be due, be recovered as a crown debt from the council or guardians by whom the defaulting committee were appointed, and the certificate of the Education Department shall be conclusive evidence that the sum named in the certificate is due.

The expenses of the local authority, other than a school board, shall be paid, when the committee is appointed by a council, out of the borough fund or rate, when by a board of guardians out of a fund to be raised out of the poor rate of the parish according to the rateable value of the parish. The board of guardians are to have the same powers for the purpose of obtaining payment of such expenses as they have for obtaining contributions to their common fund under the poor law. A parent who employs a child in any labour exercised by way of trade, or for the purpose of gain, shall be deemed to take such child into his employment. A child means a child between the ages of five and fourteen years.

The provisions of the act with respect to taking children into employment shall, during twelve months after the commencement of the act, apply to children of the age of nine years and upwards, as if they were of the age of ten years and upwards; and shall not apply to any child who has attained the age of eleven years before the commencement of the act. A child lawfully employed at the passing of this act may continue to be employed or may obtain fresh employment at another place.

The Act commenced on the 1st of January, 1877.

FISHERIES.

It is provided by 39 & 40 Vict. c. 19, that, subject to the provisions contained in sections 40–45 of the Salmon Fishery Act, 1873 (*ante*, p. 730), a board of conservators may make by-laws to alter the period during which it shall be illegal to take trout within any fishery district, so that such period shall not commence earlier than the 2nd of September nor later than the 2nd of November in each year, and shall not be less than one hundred and twenty-three days; and the board may impose a penalty by such by-law not exceeding £5, to be recovered and applied in manner provided by the Salmon Fishery Act of 1873.

FRIENDLY SOCIETIES.

The Act of 1875 (*ante*, Supplement 1875, p. 19) is amended by 39 & 40 Vict. c. 32, and in this act is called the principal act, and this act together with the principal act may be cited as "The Friendly Societies Acts."

With respect to the conversion of registered societies into branches, the following provisions shall have effect:

A society registered before the 1st of January, 1876, may, by a resolution of three-fourths of the members present at any general meeting, of which due notice has been given, determine to become a branch under the Friendly Societies Acts of any other registered society, and also of any registered branch thereof; and if the rules of such society do not comply with all the provisions of the principal act and of the Treasury regulations in respect of the registry of branches, the meeting at which such resolution is passed may amend such rules as far as is necessary.

A copy of the rules marked to show the amendments made, and two copies of such resolution, and amendment of rules, each signed by the chairman of the meeting and by the serectary of the society determining to become a branch of any other society, and countersigned by the secretary of such other society, shall be sent to the registrar, and if the registrar finds that such rules comply with the provisions of the act and of the Treasury regulations, he shall cancel the registry of such society and register the same as a branch of the other society, and also, if so specified in the resolution of any branch of the other society, without further request or notice, and shall register the amendment of rules without further application or evidence, and until such registry such resolution shall not take effect.

No advertisement of any cancelling of registry shall be requisite.

The rules of a society which becomes a branch shall, so far as the same are not contrary to any express provision of the principal act or of the Treasury regulations, and subject to any amendment, continue in force as the rules of such branch.

By section 4, registered societies may contribute to funds of other societies.

The acknowledgment of a registry of a branch and of any amendment of rules shall be in the following form (provided in the schedule to the act) :—

ACKNOWLEDGMENT OF REGISTRY OF BRANCH.

The is registered as a branch of the Society [and of the branch of the same] under the Friendly Societies Act, 1875, this day of

[*Seal of central office or signature of assistant registrar for Scotland or Ireland.*]

ACKNOWLEDGMENT OF REGISTRY OF AMENDMENT OF BRANCH RULES.

The foregoing amendment of the branch rules of the is registered under the Friendly Societies Act, 1875, this day of

[*Seal of central office or signature of assistant registrar for Scotland or Ireland.*]

INDUSTRIAL AND PROVIDENT SOCIETIES.

The law as to these societies is consolidated and amended by 39 & 40 Vict. cap. 45. The acts of 25 & 26 Vict. cap. 87, and 30 & 31 Vict. cap. 117 (*ante* p. 351) are repealed. Every incorporated society, now subsisting, whose rules have been registered or certified under any act relating to industrial and provident societies, shall be deemed to be a society registered under this act, and its rules shall, so far as the same are not contrary to any express provision of this act, continue in force until altered or rescinded. The societies which may be registered under this act are societies for carrying on any labour, trade, or handicraft, whether wholesale or retail, including the buying and selling of land ; but as to the business of banking subject to the provisions hereinafter contained. Of which societies no member other than a society registered under this act shall have or claim an interest in the funds exceeding two hundred pounds sterling. No society can be registered which does not consist of seven persons at least. For the purpose of registry, an application to register the society, signed by seven members and the secretary, and two written or printed copies of the rules, shall be sent to the registrar. No society shall be registered under a name identical with that under which any other existing society is registered, or so nearly resembling such name as to be likely to deceive the public, and no society shall change its name without sanction of the chief or an assistant registrar or otherwise than is hereinafter

provided. The word limited shall be the last word in the name of every society registered under this act. Societies carrying or intending to carry on business in more than one country shall be registered in the country in which their registered office is situate. The registrar, on being satisfied that a society has complied with the provisions as to registry, shall issue an acknowledgment of registry. The chief registrar, or, in the case of societies registered and doing business in Scotland or Ireland exclusively, the assistant registrar for Scotland or Ireland respectively, may cancel the registry of a society by writing under his hand, if he thinks fit, at the request of a society or with the approval of the Treasury, on proof to his satisfaction that an acknowledgment of registry has been obtained by fraud or mistake, or that a society exists for an illegal purpose, or has wilfully, and after notice from a registrar whom it may concern, violated any of the provisions of this act, or has ceased to exist. The chief or assistant registrar, in any case in which he might with the approval of the Treasury cancel the register of a society, may suspend the same by writing under his hand for any term not exceeding three months, and may, with the approval of the Treasury, renew such suspension from time to time for the like period. The rules of every society sent for registry shall contain the following provisions: (1) Object, name, and place of office of the society. (2) Terms of admission of the members. (3) Mode of holding meetings and right of voting and of making, altering, or rescinding rules. (4) The appointment and removal of a committee of management by whatever name, of manager or other officers, and their respective powers and remuneration. (5) Determination of the amount of interest, not exceeding two hundred pounds sterling, in the shares of the society which any member other than a registered society may hold. (6) Determination whether the society may contract loans or receive money on deposit subject to the provisions of this act from members or others, and if so under what conditions, on what security, and to what limits of amount. (7) Determination whether the shares, or any number thereof, shall be transferable; and if it be determined that the shares or any number thereof shall be transferable, provisions for the form of transfer and registration of the shares and for the consent of the committee thereto; and if it be determined that the shares or any of them shall be withdrawable, provisions for paying the members the balance due thereon on withdrawing from the society. (8) Provision for the audit of accounts. (9) Determination whether and how members may withdraw from the society, and provision for the claims of executors, administrators, or trustees of the property of bankrupt members and for the payment of nominees. (10) Mode of application of profits. (11) Provisions for the custody, use, and device of the seal of the society, which shall in all *cases bear the registered* name of the society. (12) Deter-

mination whether and by what authority and in what manner any part of the capital may be invested.—No amendment of a rule made by a registered society shall be valid until the same has been registered. Every society shall have a registered office and shall paint its name on the outside of every office in which the business of the society is carried on, and shall once in every year submit its accounts for audit, and shall in every year before the first of June send to the registrar a general statement, and shall allow any member to inspect the books. No society which has any withdrawable share capital shall carry on the business of banking. Every society which carries on the business of banking shall, on the first Mondays in February and August in each year, make out and keep hung up in its registered office and every other place of business belonging to it a statement of account. The taking deposits of not more than five shillings in any one payment, nor more than £20 for any one depositor, payable on not less than two clear days' notice shall not be included in the business of banking within the meaning of this act; but no society which takes such deposits shall make any payments of withdrawable capital while any claim due on account of any such deposit is unsatisfied. The registration of a society shall render it a body corporate, which may sue and be sued, with perpetual succession and a common seal and with limited liability. The society shall not be chargeable under schedule C or schedule D of the Income Tax Acts. A member of a society, not being under the age of sixteen years, may nominate any person, not being an officer or servant of the society, unless such officer or servant is the husband, wife, father, mother, child, brother, sister, nephew or niece of the nominator, to whom his shares in the society shall be transferred at his decease, provided that the amount credited to him in the books of the society does not exceed fifty pounds. If any member of a society entitled to an interest in the society not exceeding fifty pounds dies intestate, and without having made any nomination under this act which remains unrevoked at his death, such interest shall be transferable or payable without letters of administration to or among the persons who appear to a majority of the committee, upon such evidence as they may deem satisfactory, to be entitled by law to receive the same. Whenever the committee, after the decease of any member, make any payment or transfer to any person who at the time appears to them to be entitled under this section, the payment or transfer shall be valid and effectual against any demand made upon the committee by any other person. When trustees are absent, &c., registrar may order stock to be transferred. A person under the age of twenty-one years, but above the age of sixteen, may be a member of the society, unless provision be made in the rules thereof to the contrary. A society may, if its rules do not direct otherwise, hold, purchase, or take on lease in its own name any

land, and may sell, exchange, mortgage, lease, or build upon the same, with power to alter and pull down buildings and again rebuild, and no purchaser, assignee, mortgagee, or tenant shall be bound to inquire as to the authority for any such sale, exchange, mortgage, or lease by the society, and the receipt of the society shall be a discharge for all moneys arising from or in connection with such sale, exchange, mortgage, or lease.

The other sections of this act, which is a very lengthy one, deal with the punishment for fraud, settlement of disputes, special powers of registrars, methods of passing special resolutions, and of amalgamating societies and changing their names, and of dissolving the society.

MERCHANT SHIPPING.

By the Merchant Shipping Act, 1876 (39 & 40 Vict. c. 80), which came into operation on the 1st of October, 1876, it is made a misdemeanor to send unseaworthy ships to sea.

In every contract of service between the owners of any ship and the master or seamen, &c., there is an implied obligation, notwithstanding any agreement to the contrary, that reasonable efforts shall be used to secure seaworthiness.

The Board of Trade may order a ship to be detained in port for the purpose of being surveyed, and may appoint competent persons to survey her; and on receiving the report of the survey, may order the ship to be released or to be detained finally, or to be detained till certain repairs are made, but before an order of final detention is made, a copy of the report must be served on the master of the ship, and within seven days after service, an appeal can be made to the court of survey to consist of a judge and two assessors. The judge is to be appointed out of a list (approved by a Secretary of State) of wreck commissioners, stipendiary or metropolitan police magistrates, or other fit persons.

The assessors are to be persons of special skill and experience; one of them shall be appointed by the Board of Trade, and the other shall be summoned by the registrar of the court, out of a list of persons periodically nominated for the purpose by the local marine board of the port, or, if there is no such board, by a body of local shipowners or merchants approved for the purpose by a Secretary of State, or, if there is no such list, shall be appointed by the judge. Sections 8 and 9 deal with the powers, rules, and procedure of the court of survey. The Board of Trade are, by section 10, made liable to shipowners for costs and damages should there be no reasonable excuse for detaining a ship for the purpose of survey. If a ship is finally detained, or if there was good cause for provisionally detaining her, the shipowner is liable to pay costs, recoverable as salvage. The Board of Trade have power to require security for costs from a complainant. But when a complaint that

seems reasonable is made by one-fourth, not being less than three of the seamen belonging to a ship, security shall not be required. A foreign ship loading in a port of the United Kingdom is under the act so far as detention is concerned; but a copy of the provisional order for detaining her must be served on the nearest consular officer for the state to which such ship belongs, who may require the surveyor to be accompanied by a person selected by him. Section 14 deals with the manner of appeal on refusal of certain certificates under Merchant Shipping and Passenger Acts. If an appeal under the act involves a question of construction or design, or of scientific difficulty, the Board of Trade may refer the matter to scientific persons as referees, to be appointed out of a list approved by the Board of Trade. Passenger certificates under the Merchant Shipping Act, 1854, need not be obtained by steamers carrying less than twelve passengers. The Board of Trade has power to modify Passenger Acts as to food. The 21st section contains provisions of signals of distress, inextinguishable lights, and life-buoys, in passenger steamers and emigrant ships. No cargo of which more than a third consists of grain can be carried, unless contained in sacks or otherwise secured from shifting, under a penalty not exceeding £300 on summary conviction. The space occupied by deck cargo is to be liable to dues both in British and foreign ships, except in ships that are home trade ships. No deck loads of timber are to be carried by any British or foreign ship which arrives in any port of the United Kingdom between the last day of October and the 16th of April in any year, under a penalty of £5 per 100 cubic feet of wood goods so carried. Such penalty to be recovered by action on indictment, or to an amount not exceeding £100 on summary conviction. Sections 25–28 deal with deck and load-lines, which must be marked in manner prescribed by the act on all British ships above 80 tons register. Sections 29–33, deal with the manner of making investigations into shipping casualties.

The act should be referred to for particulars, as the law is clearly stated in it, and it is one of considerable length.

POLLUTION OF RIVERS.

By the Rivers Pollution Act, 1876 (39 and 40 Vict. cap 75), it has been attempted to prevent the establishment of new sources of river pollution. The first section prohibits persons from putting or allowing to be put into rivers the solid refuse of any manufactory, or any rubbish or cinders. Sewage is no longer to be drained into rivers, but in subsisting cases it is not forbidden to be continued if satisfactory evidence is given that the best practicable and available means have been used to render harmless the sewage matter. The Local Government Board have power to grant further time if necessary to enable any sewage to be rendered harmless.

The same rule applies to poisonous, noxious, or polluting stuff from any factory or manufacturing process, except that the Local Government Board has no such power given them as above-mentioned. Proceedings under the act as before mentioned are not, until Parliament otherwise provides, to be taken against any person save by a sanitary authority, nor without the consent of the Local Government Board, who may direct, on the application of any person, the sanitary authority to take proceedings.

Sanitary authorities shall afford facilities for factories to drain into sewers any stuff which will not prejudicially affect the sewers or the disposal by sale of the sewage matter. The county court can restrain offences against the act by summary order, but there is an appeal to the High Court of Justice. The certificate of inspection of the Board shall be conclusive evidence that the best practicable and available means have been used for rendering harmless sewage, &c., in each particular case, and such certificate shall continue in force for a period not exceeding two years.

REGISTRATION OF TRADE MARKS.

The Registration of Trade Marks Act, 1875 (Supplement, 1875, p. 28), is amended by 39 and 40 Vict. cap. 33, and instead of it being forbidden to institute proceedings to prevent the infringement of an unregistered trade mark, it is enacted that after the 1st of July, 1877, no one shall be entitled to institute any proceedings to prevent or recover damages for the infringement of any trade mark until it is registered, or until, with respect to any device, mark, name, combination of words, or other matter in use as a trade mark before the passing of the 1875 act, registration as a trade mark has been refused.

ROYAL TITLES.

By 39 and 40 Vict. cap 10, her Majesty is empowered to make, by proclamation under the Great Seal, such additions to the style and title appertaining to the Imperial Crown of the United Kingdom as to her Majesty may seem meet.

The present title of the Queen is "Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, Empress of India."

TRADES UNIONS.

The Trades Union Act of 1871 (*ante*, p. 645), is amended by 39 & 40 Vict. cap. 22. When a trustee of a trade union, in whose name any stock belonging to such union transferable at the Bank of England or Bank of Ireland is standing, either jointly *with another or others*, or solely, is abroad or becomes bankrupt,

or files any petition, or executes any deed for liquidation of his affairs by assignment or arrangement, or for composition with his creditors, or becomes a lunatic, or is dead, or has been removed from his office of trustee, or if it be unknown whether such person is living or dead, the registrar, on application in writing from the secretary and three members of the union, and on proof satisfactory to him, may direct the transfer of the stock into the names of any other persons as trustees for the union.

Trade unions carrying on business in more than one country shall be registered in the country in which their registered office is situate; but copies of the rules of such unions, and of all amendments of the same, shall, when registered, be sent to the registrar of each of the other countries, to be recorded by him, and until such rules be so recorded the union shall not be entitled to any of the statutory privileges in the country in which such rules have not been recorded, and until such amendments of rules be recorded the same shall not take effect in such country.

No certificate of registration of a trade union shall be withdrawn or cancelled otherwise than by the chief registrar of Friendly Societies, or, in the case of trade unions registered and doing business exclusively in Scotland or Ireland, by the assistant registrar for Scotland or Ireland, and at the request of the trade union, or proof that a certificate of registration has been obtained by fraud or mistake, or that the registration of the trade union has become void under the act of 1871, or that such trade union has wilfully and after notice violated any of the statutory provisions, or has ceased to exist. Not less than two months' notice shall be given by the chief or assistant registrar to a trade union before the certificate of registration of the same can be withdrawn or cancelled (except at its request).

A person under the age of twenty-one, but above the age of sixteen, may be a member of a trade union, unless provision be made in the rules thereof to the contrary.

WILD FOWLS PRESERVATION.

In order to protect wild fowl, the act 39 & 40 Vict. c. 29, was passed.

The words "wild fowl," for the purposes of the act, are to be deemed to include the different species of avocet, curlew, dotterel, dunbird, dunlin, godwit, greenshank, lapwing, mallard, oxbird, peewit, phalarope, plover, plover's page, pochard, purre, redshank, reeve or ruff, sanderling, sandpiper, sealark, shoveller, snipe, spoonbill, stint, stone curlew, stonehatch, summer snipe, teal, thick-knee, whaup, whimbrel, widgeon, wild duck, wild goose, and woodcock. Wild fowl shall not be killed or be found in any person's possession between the 15th of February and 10th of July in any year, under a penalty on conviction before a justice of

the peace of a sum not to exceed £1 for each bird. The Home Office, on application of the justices of any county in quarter sessions, may vary the close time for wild fowl for such county. Persons offending against the act may be required by any person to give their names and addresses—penalty in case of refusal, or of giving a false name or address, not to exceed £2 and costs. When any offence is committed in boundary waters it may be prosecuted in either county or district of which such waters form the boundary.

Woodfall & Kinder, Printers, Milford Lane, Strand, London, W.C.

[AUGUST 1873.]

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